TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted]22

No. [redacted]184

AUGUST BARTELS, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED AUGUST 1, 192[redacted]

([redacted],469)

(28,400)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 445.

AUGUST BARTELS, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 6, 1921.

a Filed Jul. 26, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Stipulation.

The parties in this cause, by their attorneys, agree that the following portions of the record shall constitute the transcript of the record in the pending writ of error to the Supreme Court of the United States, to-wit:

1. This Stipulation.

2. The appellant's abstract of record.

3. The opinion, dissenting opinion, and judgment of the Supreme Court of Iowa.

4. Notice of Intention to Petition for Rehearing (including the return and asknowledgment of service and date of filing the same in the office of the Clerk of the Supreme Court of Iowa).

5. The plaintiff in error or appellant's petition for rehearing (including the date of filing the same in the office of the Clerk of the Supreme Court).

6. All orders and entries of record in this cause in the Supreme Court of Iowa, including decision and ruling upon the petition for rehearing and date thereof.

7. Petition for Writ of Error and allowance thereof.

8. Assignment of Errors including date of filing in the Supreme Court of Iowa.

9. Bond and approval thereof.

10. Prayer for Reversal and Allowance of Writ of Error.

b 11. The Writ of Error, Citation and service thereof.

12. Citation in Error and service thereof.

13. Certificate of the Clerk of the Supreme Court of Iowa to said transcript.

The Clerk of the Supreme Court of Iowa is accordingly requ
to transmit only the papers designated in this stipulation.

CHARLES E. PICKETT,
PICKETT, SWISHER & FARWELL,
F. P. HAGEMANN,
Attorneys for Plaintiff in Err
BEN J. GIBSON,
Attorney General,
Attorneys for Defendant in Err

1 Filed March 18, 1920. B. W. Garrett, Clerk Supreme C

In the Supreme Court of Iowa, May Term, 1920.

STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Criminal.

Appeal from Bremer County District Court.

Hon. M. F. Edwards, Judge.

H. M. Havner, Attorney General,
F. C. Davidson, Assistant Attorney General,
W. H. Wehrmacher, County Attorney,
Attorneys for the State.

Pickett, Swisher & Farwell, and
F. P. Hagemann,
Attorneys for Appellant.

APPELLANT'S ABSTRACT OF RECORD.

We, the undersigned attorneys for the state, appellee, hereb
cept due and legal service of the within abstract of record
acknowledge receipt of copies thereof this 18 day of March, 19

H. M. HAVNER,
Atty. General;
F. C. DAVIDSON,
Asst. Atty. Gen'l;
W. H. WEHRMACHER,
County Attorney,
Attorneys for the State, Appelle

2 On January 7, 1920, the State of Iowa filed informa
before M. M. Kingsley, Justice of the Peace in and for
verly Township, Bremer County, Iowa, charging the defendant
the crime of using a language other than English as the mediu

ruction in a secular subject, said information being in the fol-
ing words, to-wit:

Information.

THE STATE OF IOWA, Plaintiff,

vs.

AUGUST BARTELS, Defendant.

ore M. M. Kingsley, Justice of the Peace in and for Waverly Township, Bremer County, Iowa.

The defendant is accused of the crime of using a language other n English as the medium of instruction in a secular subject in rivate school in Iowa taught to scholars below the eighth grade. For that the defendant, about the tenth day of November, 1919, he Township of Maxfield, in the county and State aforesaid, did a language other than English, to-wit, the German language, a medium of instruction in the teaching of a secular subject, vit, reading, to Selma Steege, Cordelia Griese and Lawrence ipo, the said persons then and there being scholars in a private ool in the aforesaid township, county and state and receiving l instruction below the eighth grade in said school from said endant who was then and there a teacher in said school, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Iowa.

E. H. RAUSCH,
Informant.

ubscribed and sworn to by E. H. Rausch, before me this 7th day anuary, 1920.

M. M. KINGSLEY,
Justice of the Peace.

Warrant was duly issued by the said Justice for the arrest of the endant. He was arrested and brought into court and pleaded guilty.

Thereupon evidence was taken in the Justice Court and trial y had upon the information, the defendant being represented F. P. Hagemann, his attorney, and the judgment of the Justice rt was, as follows:

The court finds the defendant is guilty of the crime charged in information, and it is ordered, adjudged and determined that defendant pay a fine of $25.00 and the costs of this action taxed 4.00."

ppeal bond was fixed at $100.00.

hereupon, the defendant gave notice in open court of appeal to district court of Bremer County, Iowa, and furnished the above

appeal bond which was approved by the Justice and was admitted to bail.

On January 7, 1920, the said Justice filed in the office of the Clerk of the District Court of Bremer County, Iowa, a tran-
4 script of the above case and returned and filed in said court all of the original papers and documents belonging to the said action.

The Transcript.

The transcript shows the filing of the information in the Justice Court, the issuance of the warrant, the arrest of the defendant, his plea of not guilty, the trial in the Justice Court, and the judgment of the court finding him guilty of the crime charged, and judgment imposing a fine of $25.00 and costs taxed at $4.00, the notice of appeal given in open court to the district court, the requirements of appeal bond and the furnishing of the bond, and proper certificate is attached to the transcript.

Proceedings in the District Court.

On January 22, 1920, the cause came on for hearing in the district court by way of appeal by the defendant from the judgment rendered against him in the aforesaid Justice Court.

Plea of the Defendant.

The defendant, being represented in court in person and by his counsel, pleaded not guilty to the offense charged in the information. All parties waived trial to a jury.

State's Evidence.

The State then introduced in evidence an agreed statement of facts, as follows:

5 It is stipulated between the State of Iowa and August Bartels, defendant, that the following is a true and correct statement of the facts involved in the case, and that the case shall be tried and determined upon said facts without the introduction of any other testimony therein, said facts being as follows, to-wit:

First. That St. John's Evangelical Lutheran Church is a rural church located in Maxfield Township, Bremer County, Iowa; that the church corporation owns and uses a church edifice and parochial school building and other property in connection therewith of the reasonable value of approximately $40,000, and at the present time has a congregation of approximately three hundred with two hundred communicants; that it is a religious organization affiliated with the Evangelical Lutheran Synod of Iowa and other states, and that the said church and its parochial school have been continu-

ously supported and maintained by the members for religious purposes in accordance with the beliefs and practices of the said Evangelical Luther Synod of Iowa and other states. That among the beliefs and practices of the said church and the Synod with which it is affiliated is the belief and practice of having the children of the members and communicants attend its parochial school until after their confirmation and acceptance into the church as communicants thereof, and that the object and purpose of the parochial school is to give the said children of the members and communicants a Christian education in the catechism, beliefs and practices of the said church at the same time that they are receiving their secular education in the common branches, and to conduct
6 daily in said school devotional exercises in accordance with said beliefs and practices.

Second. That the children attending said school are the children of the communicants and members of the aforesaid church, and that the present school attendance is, and for some years has been, approximately thirty-six pupils, of the ages between six and thirteen years, both inclusive; that the said parochial school is in session thirty six weeks of five days each, with school hours from nine o'clock A. M. to twelve noon, and from one o'clock P. M. to four o'clock P. M. each school day, beginning about the middle of September and ending about the middle of the following June, with the ordinary holiday vacations; that ordinarily the children of the school are confirmed and received into the church on attaining the age of thirteen years, at which time said pupils are expected to, and as a rule, have completed the seventh grade in the common school branches mentioned in paragraph three hereof, and that as a rule the pupils of the school, after completing the seventh grade and being confirmed, attend the public schools in the same community, entering the eighth grade of the said public schools; that the school year in the parochial school is a month or more longer than is the school year in the public schools of the same community.

Third. That the secular branches taught in said parochial school, to-wit, the common school branches of reading, writing, spelling, arithmetic, grammar, geography, American citizenship, physiology and United States history, are taught and, for a number of years, have been taught in the English language with English as
7 the medium of instruction; and that the text books used in said subjects are the same text books used in the public schools in said community, and that the instruction given in the aforesaid common branches is equivalent and, in all respects, is substantially the same as the instruction given in the said common branches in the public schools in said community.

Fourth. That the defendant, August Bartels, is the duly appointed, employed and acting teacher of the aforesaid parochial school, and has been the teacher of said parochial school continuously during the last five years; that said defendant is a competent teacher possessing the necessary qualifications and moral character for that purpose.

Fifth. That the members and communicants of the aforesaid church and the children attending the aforesaid parochial school are of foreign extraction; that all of said members and communicants, whether immigrants, or born in this country, and this defendant and the children attending the parochial school, are citizens of the state of Iowa and of the United States, either by reason of their birth in this country, or by reason of their naturalization or the naturalization of their parents, as, and in the manner, provided by law.

Sixth. That the members and communicants of said church have always been accustomed to worship in the church and have devotional exercises in the home in the German language and that the devotional exercises and religious instruction of the children in said parochial school for many years was exclusively in the German. Dur-
8 ing recent years religious instruction in the said parochial school has been and is now given in both the English and German languages. This instruction has been given in this way in order that the children might be able to participate intelligently with their parents in religious worship in the home and in the church. It is done also for the purpose of enabling the parents to supplement the religious instruction of the school by instruction in religions and morals in the home. It is the desire of the parents of the children who are in attendance at said school that their children be given instruction in religious matters in the German language and that the children acquire a sufficient knowledge of the German language to enable them to real intelligently the church catechism and the Bible in the German.

Seventh. That a part of the communicants and members of the aforesaid church have insufficient knowledge of the English language to freely and clearly receive or impart instruction in the matter of religion and morals, or to take part with the same freedom and the same understanding in religious or devotional exercises conducted in the English language that they would in the German; that among the duties enjoined by said church and which are the beliefs and practice of the communicants of said church whose children are now attending the aforesaid parochial school, are the duties of assembling with the members of their families and attending at stated periods devotional services conducted in the home and of attending with their children religious services conducted in said church, consisting of sermons, instruction in matters of faith and religion, the singing of hymns and other religious and devotional exercises usual in
9 Protestant Christian churches. That knowledge of the catechism is essential to confirmation in the church and that it is the belief of the members and communicants of said church, whose children are now attending the aforesaid parochial school, that the training of their children in religion and in Christian citizenship will be materially and irreparably interfered with unless the said children learn to read the language used by the parents in worship in the church and the home. That it is the belief of the said church and the members and communicants thereof, that children should

be prepared for confirmation at about the time they complete the seventh grade in the secular branches, or when they have attained the age of thirteen years. It is also the belief of the members and communicants of the said church that parents will not be able to perform their full Christian duty toward their children in accordance with the beliefs and practices of the church if they are unable to supplement the religious training of their children through admonitions and worship at the home conducted by the parents in the German language in which they are accustomed to worship.

Eighth. That on November 10, 1919, and upon each school day during the present school year beginning about the middle of September, 1919, up to the time of the filing of the information in this case, the defendant, August Bartels, in addition to teaching through the medium of the English language the common school branches mentioned in paragraph three hereof, (including among said common school branches, English reading by the use of English text books) did teach in said parochial school reading in the Ger-
10 man language to the pupils of said school, to-wit: Selma Steege, Cordelia Griese and Lawrence Phipo, and to the other pupils in said school whose names are not herein set out. That the said pupils to whom reading was taught in the German language were of the ages between six and thirteen years, inclusive, and were below the eighth grade. That ordinary German school readers appropriate to the advancement of the respective pupils were used in said school. German was used as the medium of instruction by the defendant in teaching reading of the German language. That said German reading was taught at the request and with the full consent of the parents of said children and for the purpose of teaching the said children to read the German language sufficiently to enable them intelligently to read the catechism and Bible in that language and to understand religious instruction when given in said language and to take part in religious services conducted in said language in the church and Sunday School and in the home.

Ninth. That the whole of the above statement of facts, or any part thereof, at the time of the trial, may be objected to upon the grounds of irrelevancy and immateriality, or for the reason that the same is an opinion or a conclusion.

H. M. HAVNER,
Attorney for State of Iowa.

F. P. HAGEMANN AND
PICKETT, SWISHER & FARWELL,
Attorneys for Defendant.

11 The State further introduced in evidence an amendment to said stipulation of facts, as follows:

Come now the parties to the above entitled cause and amend the stip-lation of facts, as follows:

Strike from paragraph numbered Eight of the Stipulation the following words:

"That ordinary German school readers appropriate to the advancement of the respective pupils were used in said school."

and in lieu thereof, insert:

"That the text books used in teaching reading in the German language to said pupils were printed in the German language and contained such reading lessons as ordinarily appear in elementary reading text books printed in the English language and used in the public schools of the state, and are hereby admitted to be of a secular character rather than of a religious character."

It is further stipulated that no objection is to be interposed to the above agreement of facts because the readers themselves are not introduced in evidence.

The above stipulation of facts and the amendment thereto were also filed with the Clerk, and both parties then rested.

Motion for Directed Verdict or Dismissal of the Case.

Thereupon the defendant filed the following:

12 Comes now the defendant and moves the court to direct a verdict in his favor or to dismiss the above entitled case on the ground that the stipulation of facts filed herein shows that the defendant is not guilty of the crime charged or of any crime under the laws of the State of Iowa, for the following reasons:

1. That Chapter 198 of the Acts of the 38th General Assembly of the State of Iowa, which the defendant is claimed to have violated, is unconstitutional and void in that:

(*a*) The acts therein prohibited as applied to the case at bar interferes with the liberty, property, safety and happiness guaranteed the defendant and the pupils to whom he is alleged to have faught, reading in the German language by Article 1, Section 1 of the Constitution of the State of Iowa.

(*b*) That the said purported law prohibits the free exercise of religion within the meaning of Section 3 of the Article 1, of the Constitution of the State of Iowa, and is, therefore, void.

(*c*) The acts complained of as disclosed by the stipulation of facts filed herein are merely the exercise of rights retained by the people under Section 25 of Article 1 of the Constitution of the State of Iowa, and, that, therefore, the said statute is void and unconstitutional.

2. That the aforesaid sta-ute, to-wit, Chapter 198 of the Acts of the 38th General Assembly, under which the information was filed herein, is unconstitutional and void in this:

(*a*) That it deprives the defendant and the pupils that he was teaching reading in the German language of their rights, liberty and property within the meaning of Section 1 of Article XIV of the Constitution of the United States, and

13 (b) The acts complained of herein and inhibited by said statute are among the rights retained by the defendant and citizens of the United States by Article IX of the Constitution of the United States, and that the said statute is therefore void because of the constitutional provisions of the federal constitution.

3. That the provision occurring in Chapter 198 of the Acts of the 38th General Assembly of Iowa, reading "and the use of any language other than English in secular subjects in said schools is hereby prohibited" is void and unconstitutional in that the subject matter thereof is not contained in the Title as required by Section 29 of Article III of the Constitution of the State of Iowa.

4. That the acts of the defendant disclosed in the stipulation of facts are not inhibited by the aforesaid Chapter 198 of the Acts of the 38th General Assembly of the State of Iowa in that said acts are not within the letter and spirit of the law.

5. That under the undisputed facts in this case the teaching of reading to said pupils in the German language is a part of the religious instruction given in said school and in no wise a part of their secular education.

6. The constitutionality of the statute, viz. Chapter 198 of the Acts of the 38th General Assembly, being assailed herein, and the said statute being susceptible of an interpretation which would make it constitutional and of an interpretation which makes its constitutionality very doubtful, it is the duty of the court to adopt that construction which will uphold the validity of the statute, there
14 being a strong presumption that the law making body has intended to act within and not in excess of its constitutional authority; and under such circumstances, it is the duty of the court to avoid serious constitutional doubts and to adopt that construction that will make the statute constitutional, and applying his rule, the acts complained of should be held not to be within the inhibition of the said statute.

7. That the acquisition of a reading knowledge of a foreign language by a child under the eighth grade is not in any way detrimental to the safety or welfare of the state or nation and does not in any way endanger the morals or happiness of the child or of the people and the power to inhibit the teaching of a foreign language in the parochial school under the circumstances disclosed in this case is not within the police power of the state, and any statute making it a crime for the defendant to teach reading in a foreign language, under the circumstances disclosed in this case in the parochial school, such as the defendant was teaching, would be void under both the state and Federal constitution. Therefore, it is the duty of the court, either to declare the statute unconstitutional, or to so construe it and limit the operation thereof to such matters as may be the proper subject of police legislation.

8. That the facts of the defendant as disclosed by the stipulat of facts herein not being within the letter and spirit of the law, proper construction of said statute requires that exceptions there be implied by the court as they must have been implied by the legi lature, and the statute should be so construed as to uphold liberty, civil and religious, of the defendant and of the peo 15 of the state and as will protect them in their inalien rights.

9. That if this case was tried to a jury, it would be the duty the court, under the stipulation of facts herein, to direct a verd for the defendant, or if the case was submitted to a jury and verdict of guilty returned, it would be the duty of the court to the same aside as not sustained by sufficient evidence, and it therefore, the duty of the court to discharge the defendant and hold that he is not guilty of committing any crime under the la of the State of Iowa.

After argument upon the above motion, the court took the sa under advisement with agreement of parties that ruling might had thereon and the case be decided later in the term.

Ruling on Motion.

On March 1, 1920, the court overruled the defendant's moti for directed verdict and to dismiss the case and each and eve ground thereof, to all of which the defendant at the time except On said first day of March, 1920, the court found that under t stipulation of facts the defendant was guilty of the offense charg in the information, to which defendant duly excepted.

Motion for New Trial.

Thereupon on March 1, 1920, the defendant filed motion for n trial, as follows:

16 "Comes now the defendant and moves the court to gra a new trial to the defendant in this case on the grounds an each thereof stated in the motion to direct a verdict, which by th reference is made a part of this motion."

On March 1, 1920, the court overruled defendant's said moti for a new trial, to which the defendant at the time excepted.

Judgment.

And the defendant being present in court by his attorney, F. Hagemann, waived time, and thereupon the court pronounced jud ment that the defendant was guilty of the offense charged in t information and imposed a fine upon him of $25.00 and costs tax at $—, and fixing the bond on appeal at $300, to which judgme the defendant at the time duly excepted.

Appeal Bond.

That on the 8th day of March, 1920, the defendant duly filed in the office of the Clerk of the District Court has appeal bond in the sum of $300 conditioned as required by law with sureties approved by the Clerk.

Appeal to the Supreme Court.

On the 8th day of March, 1920, the defendant duly appealed from the judgment and ruling of the trial court to the Supreme Court of Iowa by serving a notice of appeal in the usual
17 & 18 form upon H. M. Havner, attorney general, F. C. Davidson, assistant attorney general, and W. H. Wehrmacher, county attorney, attorneys of record for the state, and upon I. E. Smith, Clerk of the District Court of Bremer County, which notice was duly filed with the Clerk of the District Court in said cause.

Certificate.

We hereby certify that the foregoing is a true, full and complete abstract of the record in said case and contains all the evidence adduced introduced or offered on the trial of said case, and all of the objections, motions and rulings made and exceptions taken.

PICKETT, SWISHER &
FARWELL AND F. P. HAGEMAN,
Attorneys for Appellant.

We certify that the actual cost of printing the foregoing abstract of the record is $27.00.

PICKETT, SWISHER &
FARWELL AND F. P. HAGEMAN,
Attorneys for Appellant.

Notice of Oral Argument.

Defendant hereby gives notice that upon the submission of the foregoing case he will argue the same orally.

PICKETT, SWISHER &
FARWELL AND F. P. HAGEMAN,
Attorneys for Appellant.

19 STATE OF IOWA, *ss:*

Supreme Court of Iowa.

Be it remembered, That on the 30th day of June, 1920, the following proceedings, among others, were had in the Supreme Court of Iowa, to-wit:

THE STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Appeal from Bremer District Court.

This case is submitted on Abstract and Arguments on file a
oral argument of counsel for both sides.

I hereby certify that the foregoing is a full, true and comple
copy of the Record entry of said Court in the above entitled ca
as full, true and complete as the same remains on file and of rec
in my office.

In Testimony Whereof, I have hereunto set my hand and affix
the seal of said Court, at Des Moines, this 26 day of July, A. D. 192

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk.

20 Filed February 12, 1921.

In the Supreme Court of Iowa, January Term, 1921.

THE STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Appeal from Bremer District Court.

Hon. M. F. Edwards, Judge.

The defendant was convicted of a violation of chapter 198 of t
Acts of the Thirty-Eighth General Assembly, which prohibits t
use of any language other than English in teaching secular subje
in the public or private schools of this state. From such conv
tion and sentence thereon this appeal is prosecuted. The opini
states the facts. Affirmed.

Pickett, Swisher & Farwell, of Waterloo, and F. P. Hageman
of Waverly, for appellant.

H. M. Havner, Atty. Gen., F. C. Davidson, Asst. Atty. Gen., a
W. H. Wehrmacher, Co. Atty., of Waverly, for the State.

FAVILLE (*J.*):

An information filed with a justice of the peace charged that t
defendant, on or about November 10, 1919—

"did use a language other than English, to-wit, the German langua
as a medium of instruction in the teaching of a secular subject,

wit, reading, to Selma Steege, Cordelia Griese, and Lawrence Phipo, the said persons then and there being scholars in a private school in the aforesaid township, county, and state and receiving said instruction below the eighth grade in said school from said defendant, who was then and there a teacher in said school."

21 He was found guilty, and on appeal to the district court the case was submitted on stipulation of facts from which it appeared that:

(1) "A rural church known as 'St. John's Evangelical Lutheran Church,' located in Maxfield township, Bremer county, owns and uses a church edifice and parochial school building, and other property in connection therewith, of the value of approximately $40,000, and during the period in question had a congregation of about 300, of whom 200 were communicants; that it is a religious organization affiliated with the Evangelical Lutheran Synod of Iowa and other states, and that the said church and its parochial school have been continuously supported and maintained by the members for religious purposes in accordance with the beliefs and practices of the said Evangelical Lutheran Synod of Iowa and other states. That among the beliefs and practices of the said church and the synod with which it is affiliated is the belief and practice of having the children of the members and communicants attend its parochial school until after their confirmation and acceptance into the church as communicants thereof, and that the object and purpose of the parochial school is to give the said children of the members and communicants a Christian education in the catechism, beliefs, and practices of the said church at the same time that they are receiving their secular education in the common branches, and to conduct daily in said school devotional exercises in accordance with said beliefs and practices."

(2) "Those attending said school are children of the members of the church, approximately 36 pupils in number, of the ages between 6 and 13 years, both inclusive. That the said school is in session 36 weeks of 5 days each, with school hours from 9 o'clock a. m. to 12 o'clock noon, and from 1 o'clock p. m. to 4 o'clock p. m. each school day, beginning about the middle of September and ending about the middle of the following June, with the ordinary holiday vacations. That ordinarily the children of the school are confirmed and received into the church on attaining the age of 13 years, at which time the said pupils are expected to, and as a rule, have completed the seventh grade in the common school
22 branches, and usually thereafter attend the public schools in the community, entering the eighth grade thereof. The school year of the parochial school is a month or more longer than that of the public schools in the same community. The branches taught are the common school branches of reading, writing, spelling, arithmetic, geography, American citizenship, physiology, and United States history, and these are taught in the English language, with English as the medium of the instruction, the textbooks being the

same as those used in the public schools in the same communi and the instruction being substantially the same as the instructi given in the common branches of the public schools in the co munity.

(3) The defendant, Bartels, is "the duly appointed, emplo and acting teacher of said parochial school continuously duri the last 5 years. That said defendant is a competent teacher, p sessing the necessary qualifications and moral character for t purpose."

(4) The members of the said church whose children attend t school are of foreign extraction, but they, as well as their childr and this defendant, are citizens of this country.

(5) "The members and communicants of said church have alwa been accustomed to worship in the church and have devotional ex cises in the home in the German language, and that the devotion exercises and religious instruction of the children in said parochi school for many years was exclusively in German. During rece years religious instruction in the said parochial school has be and is now, given in both the English and German languages. Th instruction has been given in this way in order that the childr might be able to participate intelligently with their parents in r ligious worship in the home and in the church. It is done for t purpose of enabling the parents to supplement the religious instru tion of the school by instruction in religion and morals in the hom It is the desire of the parents of the children who are in attendan at said school that their children be given instruction in religio matters in the German language to enable them to read intel gently the church catechism and the Bible in the German —."

(6) Part of the communicants and members "have insufficie knowledge of the English language to freely and clearly receive impart instruction in the matter of religion and morals, or to ta part with the same freedom and the same understanding
23 religious or devotional exercises conducted in the Engli language that they would in the German; that among t duties enjoined by said church, and which are the beliefs and pr tices of the communicants of said church whose children are no attending the aforesaid parochial school, are the duties of assemblin with the members of their families and attending at stated perio devotional services conducted in the home, and of attending wi their children religious services conducted in said church, consistin of sermons, instructions in matters of faith and religion, and singi of hymns and other religious and devotional exercises usual Protestant Christian churches. That knowledge of the catechism essential to confirmation in the church, and that is the belief of t members and communicants of said church whose children are no attending the aforesaid parochial school. That the training of the children in religion and Christian citizenship will be material and irreparably interfered with unless the said children learn read the language used by the parents in worship in the church a

the home. That it is the belief of the said church and the members and communicants thereof that children should be prepared for confirmation at about the time they complete the seventh grade in the secular branches, or when they have attained the age of 13 years. It is also the belief of the members and communicants of said church that parents will not be able to perform their full Christian duty toward their children in accordance with the beliefs and practices of the church if they are unable to supplement the religious training of their children through admonitions and worship at the home conducted by the parents in the German language in which they are accustomed to worship."

(7) The defendant through the medium of the English language taught the common school branches heretofore mentioned, and also taught reading in the German language to the pupils named in the indictment, and others, who were of ages "between 6 and 13 years inclusive, and were below the eighth grade." "The text-books used in teaching reading in the German language to said pupils were printed in the German language, and contained such reading lessons as ordinarily appear in elementary reading text-books printed in the English language, and used in the public schools of the state, and are hereby admitted to be of a secular character rather than of a religious character."

24 German was used as the medium of instruction by defendant in teaching reading in the German language. This German reading was taught at the request and with the full consent of the parents of the said children, and for the purposes of teaching said children to read the German language sufficiently to enable them intelligently to read the cathechism and Bible in that language and to understand and to take part in religious services conducted in said language in the church and Sunday School and in the home. The facts so stipulated were held to establish defendant's guilt, and he was sentenced to pay a fine of $25. He appeals.

(1) From the foregoing it will be observed that the accused taught in a parochial school connected with St. John's Evangelical Lutheran Church in Bremer county, and had so done from the middle of September to November 10, 1919. The instruction was in branches below the eighth grade. He employed English as a medium of instruction in all the common school branches, but taught the pupils to read in the German language, and used German in so doing. The text-book used was printed in the German language and contained reading lessons such as ordinarily appear in the English reading text-books in the public schools, and was admitted to be of a secular character rather than a religious character. Such are the facts, and it is plain enough therefrom that the accused (1) employed the German language as a medium of instruction in a secular subject—i. e., reading—and (2) taught the German language to pupils below the eighth grade, in violation of section 1 of

25 chapter 198 of the Acts of the Thirty-Eighth General Assembly, which provides:

"The medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language and the use of any language other than English in secular subjects in said schools is hereby prohibited, provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course * * * above the eighth grade."

The second section of the act provides for a penalty against any person violating any of the provisions thereof. It cannot well be contended but that the accused, in what he did, brought himself clearly within the letter of the prohibition of this act, and we do not understand his counsel to contend otherwise. Appellant's theory seems to be that the acts complained of were not intended by the law-makers to be prohibited, and, if so intended, the statute is inimical to certain provisions of the Constitution. This contention is based largely on the fact that the school in question is maintained by the members of the church, and it is contended, in accordance with the object of giving their children an education in the catechism, beliefs and practices of the church at the same time they are receiving their education in the branches, that it is desirable that they be taught to read in German. Ordinarily their religious education is so advanced when they attain the thirteenth year that they are taken into the church, and as ordinarily they have then completed the seventh grade in the common branches they enter the eighth grade of the public school in the same community. The members of the church are of foreign extraction, but are, as well as their children, citizens of this country. They are accustomed to worship at church, as well as at home, in the German language. Formerly the religious instruction was given in the parochial school exclusively in German, but in recent years in English as well. The purpose of instruction in German was to enable the parents to supplement the religious instruction of the school by instruction in religion and morals in the home. These parents desire their children to acquire sufficient knowledge of the German language to enable them to read intelligently the church catechism and Bible in German. A considerable number of the members of the church cannot speak or read in English, and these participate in worship with their children and impart instruction in German. It is the belief of members and communicants of the church that parents will not be able to perform all their full Christian duty toward their children in accordance with the beliefs and practices of the church if they are unable to support the religious training of their children through admonition and worship at the home conducted by the parents in the German language, in which they are accustomed to worship. It is to be observed that neither the statute quoted nor any other of this state restricts the right of parents at home or through instructors in private or parochial schools to worship according to their faith and religious belief in whatever language they choose, unless it may be said that such be the effect of this statute limiting the use of languages other than English in imparting in-

struction, and prohibiting the teaching thereof below the eighth grade. It is not pretended that religious instruction at home, in the church, or school has been interfered with, save as the right to teach the German language, especially in reading, is impinged upon by denial of the right to instruct pupils therein and thereby qualify the children to participate in worship with their parents and receive instruction from them.

(2, 3) It is helpful in construing or interpreting statutes to ascertain the general policy of the state regarding the subject. Surely no one will gainsay that the state has a right, under its general police power, to enact reasonable and proper statutes respecting the education of its youth. Such power and right has been too long recognized to now be questioned or to require citation of authority to support its legitimate exercise.

(4, 5) It is undoubtedly true that the state cannot pass arbitrary laws excluding foreigners from its borders. The power to regulate and restrict immigration rests in the federal government alone. But the state does have the power to control its own internal affairs and to prescribe such laws as are proper for the government of its citizenry, provided such laws do not contravene the provisions of the Constitution of the United States or of the state.

28 It is true that the federal government has the exclusive control of the gates of Castle Garden, and can determine who may enter through them, but when a foreigner has passed through those portals and has become a resident of the state of Iowa, he becomes at once amenable to the laws of this state in so far as they do not transcend those constitutional rights vouchsafed to all citizens. The state has a right to adopt a general policy of its own respecting the health, social welfare, and education of its citizens, and as long as it does no violation to constitutional inhibitions the citizen within its borders has no other alternative than to obey or remove to a more congenial environment. Iowa has not been backward in enacting legislation under these well-recognized powers. Our public health statutes, providing for compulsory quarantine and similar regulations, have been upheld and enforced. A citizen may feel that he has a perfect right to determine for himself whether his child under 16 years of age shall be employed, and the hours and conditions of such service, but, if so, he must acquire residence in some state which has no child labor law similar to ours. So, too, with many other statutes which have been enacted by our General Assembly and are the settled policy of this state. To all such the person, native-born or foreigner, who seeks residence within this commonwealth must subscribe. From the earliest days the settled policy of this state has been to foster, encourage, and promote the education of its youth. Our great public school system and our state institutions of higher education are the outcome and result of this policy. No one
29 will dispute the power and the right of the state to adopt and carry out such a beneficent policy. Our question in the in-

stant case concerns the limitations that shall be placed upon t exercise of the power of the state in the fulfillment of that poli We have a right to consider the policy of the state, the conditio sought to be remedied, and the remedy proposed.

For many years we have had a statute in this state known as t "Compulsory Education Law." It provides that—

"Any person having control of any child of the age of seven sixteen years inclusive, in proper physical and mental condition attend school, shall cause said child to attend some public, private, parochial school, where the common school branches of reading, wri ing, spelling, arithmetic, grammar, geography, physiology, an United States history are taught, or to attend upon equivalent in struction by a competent teacher elsewhere than school, for at lea twenty-four consecutive school weeks in each school year, com mencing with the first week of school after the first day of Septem ber, unless the board of school directors shall determine upon a late date, which date shall not be later than the first Monday in Decem ber, but the board of school directors in any city of the first or secon class may require attendance for the entire time the schools are i session in any school year." Code Supp. 1913, Sec. 2823*a*.

Can any one doubt the established and settled policy of the stat to compel the education of all children within its borders betwee the ages of 7 and 16 years? But some citizen may say that he doe not care to have his child educated in the prescribed branches or t attend school at all. The power of the state to enforce such a statut against the wish of the citizen has been challenged, but, so far as w are advised, without success.

So we have the fixed policy of the state that all childre
30 between the ages of 7 and 16 must attend either a public o private school for a specified time and study specifie branches. As early as the Code of 1897, Sec. 2749, it was provide that in the public schools the electors might determine that addi tional branches should be taught, but that "instruction in al branches except foreign languages shall be in English." Here again was a declaration of the policy of the state that has long stood un challenged.

Again, the Thirty-Eighth General Assembly passed an act provid ing that—

"All public and private schools located within the state of Iow shall be required to teach the subject of American citizenship." Chapter 406, Acts 38th G. A.

Here we have a clear pronouncement of the policy of the state i regard to all schools, either public or private. Did the Legislatur have power to enact such a statute?

Can the state not only compel children to attend school, either pub lic or private, but also designate the branches that must be taught and that these shall include the subject of American citizenship?

Can some teacher of a private school claim immunity from prosecution for violation of this statute because of the claim that his constitutional rights are invaded, and that the state has no power to compel him to teach American citizenship in a private school? We are referring to these statutes merely to show the established and settled policy of the state.

With this situation before it, the Thirty-Eighth General Assembly enacted the statute in question, providing that in private as well as public schools all secular subjects shall be taught in English
31 below the eighth grade. Was this consistent with the established policy of the state? It applied the established policy of the use of English to private as well as public schools below the eighth grade, and in effect prohibited the teaching of any secular subject in any other language to pupils of the designated class. It is apparent at once that this legislation is consistent with the long-existent policy of this state in providing for the education of its youth, in making that education compulsory, in providing what branches of learning must be taught, and finally in requiring that, for pupils below the eighth grade, all such instruction in both public and private schools shall be in the English language. The policy of the state has been a progressive one, but it has been consistent and in full keeping with its powers to do all these things for the better training and education of its youth for the full duties and responsibilities of American citizenship. The advent of the great World War revealed a situation which must have appealed very strongly to the Legislature as justifying the enactment of this statute. Men called to the colors were found to be in some instances not sufficiently familiar with the English language to understand military commands or to read military orders. It was to meet this situation, to encourage the more complete assimilation of all foreigners into our American life, to expedite the full Americanization of all our citizens that the Legislature deemed this statute for the best interests of the state.

The manifest design of this language statute is to supple-
32 ment the compulsory education law by requiring that the branches enumerated to be taught shall be taught in the English language and in no other. The evident purpose is that no other language shall be taught in any school, public or private, during the tender years of youth, that is, below the eighth grade, to the end (1) that pupils in our schools, public or private, shall be educated in the language of this country, so as to be able to read, write, and spell the same; (2) that time ordinarily devoted to such object be not diverted to others; (3) that pupils be impressed in their youth that English is the language of this country, without a rival, even though another be spoken at home; and (4) that an education such as is given in the common schools be extended to pupils in the private schools, and that the standard of education shall be uniform throughout the state. The policy of the state is apparent, and the evil sought to be remedied is manifest. With the wisdom of the act of the Legislature in passing the statute in question as a means of meeting this situation and seeking to remedy the same we have no con-

cern whatever. That question was wholly for the determination of the General Assembly. They adopted such means as to them seemed wise, appropriate, and efficient.

(6, 7) Our sole inquiry is, Did the Legislature in enacting this statute contravene constitutional provisions? From an early day it has been the rule of this court that a law will be declared to be unconstitutional only when it is "clearly, plainly and palpably so." The case must be "clear, decisive and unavoidable." The court "performs the duty with scrupulous regard for the prerogatives of
33 the co-ordinate branches of the government and without lust of power." See Morrison v. Springer, 15 Iowa, 304; Santo v. State, 2 Iowa, 165, 63 Am. Dec. 487; Stewart v. Board of Supervisors, 30 Iowa, 14, L. Am. Rep. 238; McGuire v. C., B. & Q. R. R. 131 Iowa, 340, 108 N. W. 902, 33 L. R. A. (N. S.) 706; Hubbell v. Higgins, 148 Iowa, 36, 126 N. W. 914, Ann. Cas. 1912B, 822; State v. Fairmont Creamery Co., 153 Iowa, 702, 133 N. W. 895, 42 L. R. A. (N. S.) 821; Hunter v. Coal Co., 175 Iowa, 245, 154 N. W. 1037, 157 N. W. 145, L. R. A. 1917D, 15 Ann. Cas. 1917E, 803.

(8, 9) With these well-established rules in mind, let us inquire. Does the statute in question so infringe upon the Constitution that we must declare it to be invalid? It is the contention of the appellant that it is inimical of article 1 of the Constitution of Iowa. This provides:

"Rights of Persons.—Section 1. All men, are by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

"Religion.—Sec. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates, for building or repairing places of worship, or the maintenance of any minister or ministry."

Appellant's argument is to the effect that the parents of the children attending defendant's school desire that their children shall be taught to read the German language at school in order that they may read the catechism and Bible in German at home and receive
34 instruction in religious subjects at home in the language spoken by the parents. The point is stressed that the particular thing taught was reading; that to learn to read the German language is "cultural"; that to teach reading in German is an "innocent act", and that it is being done by appellant for a religious purpose, namely, that the children may by reason thereof receive religious instruction at home in the German language. We cannot accept appellant's conclusions in this matter. It is admitted in the stipulation that the text-book used was of a secular character rather than of a religious character.

The ultimate purpose sought to be attained by defendant is not a controlling factor in determining the validity of this statute. At

the outset, let it be noticed that the statute in no manner whatsoever interferes with the defendant's right to impart religious instruction in any language he may choose in a parochial school. It is expressly limited to the teaching of secular subjects. He can teach his pupils to read the catechism in German in his school, if he desires, as religious instruction, without violating the law, but he cannot teach the secular subjects, of reading writing spelling, grammar, etc., in any foreign tongue. In this there is no interference whatever with appellant's "free exercise" of religion. He cannot teach writing in German and evade the effect of the statute by claiming that he did so because his pupils must learn to write on religious themes in a language their parents could read. He admits he is teaching a secular subject in direct violation of the statute.

The statute in no manner whatsoever interferes with religious freedom. It is expressly limited to secular subjects. There
35 is scarcely any secular subject taught in our schools that cannot fairly be said to be used in some way in connection with religious instruction or religious belief. It would be going to extreme lengths to say that the regulation of the teaching of such a subject was an interference with religious freedom, because it might be utilized in acquiring religious instruction in some way. Arithmetic, history, writing, geography, all are properly used in religious instruction to some degree. As bearing on this feature of the discussion, see Owens v. State, 6 Okl. Cr. 110, 116 Pac. 345, 36 L. R. A. (N. S.) 633, Ann. Cas. 1913B, 1218; Smith v. People, 51 Colo. 270, 117 Pac. 612, 36 L. R. A. (N. S.) 158; Reynolds v. U. S., 98 U. S. 145, 25 L. Ed. 244.

(10) Again it is argued that the act in question is unconstitutional because it violates the Fourteenth Amendment to the federal Constitution This amendment has been the subject of such discussion by our courts, federal and state, that the decisions are like the sands of the sea for number. Is any right vouchsafed to the appellant by this amendment violated by this statute? There is, as we view it, no inherent right, no "privilege" to teach German to children of tender years that cannot lawfully be denied by the Legislature when, in its judgment and discretion, the exercise of such right under existing conditions is inimical to the best interests of the state.

(11) This constitutional protection is enjoyed always subject to the police power of the state to regulate professions, trades, and occupations in the interest of the public welfare. The statutes regulating the practice of medicine, dentistry and law are
36 familiar examples of such lawful exercise of the power of the state regarding professions. See Reetz v. Michigan, 188 U. S. 505, 23 Sup. Ct. 390, 47 L. Ed. 563; State v. Bair, 112 Iowa, 466; Gundling v. Chicago, 177 U. S. 183, 20 Sup. Ct. 633, 44 L. Ed. 725; Hunter v. Coal Co., supra; 12 Corpus Juris, 1121.

(12) As we have observed, a known evil existed; it was within the power of the Legislature to seek to remedy it by the enactment

of this statute. The defendant has a right to engage in the profession of teaching, but in so doing he is subject to such legislative enactments as may be fairly and reasonably said to be for the public welfare. We think this statute was a proper and reasonable exercise of the police power of the state in attempting to prevent an existing evil which the Legislature regarded as inimical to the public welfare. Such being the case, the defendant has not been denied any privileges guaranteed him by the Constitution.

(13) Again it is argued that the act in question is class legislation. We do not so regard it. It operates upon all amenable to it alike. All persons similarly situated are affected alike by it. It applies equally to every teacher of the state, in public, parochial, or private schools, teaching pupils below the eighth grade.

(14) We have recognized the well-established rule that—

Classification "must be natural and reasonable and not arbitrary or caparicious. The legislation must extend to and embrace accurately all persons who are or may be in like circumstances." State v. Fairmont Creamery Co., supra.

37 (15) For the purpose of ascertaining whether or not the classification is arbitrary and unreasonable, we must take into consideration matters of common knowledge and common report and the history of the times. Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 31 Sup. Ct. 259, 55 L. Ed. 328; State v. Fairmont Creamery Co., supra.

We have already referred to the conditions that existed and the evil the Legislature sought to remedy. As before stated, the act applies uniformly to all teachers of the state below the eighth grade. We do not think such classification either arbitrary or unreasonable.

(16) It is argued by appellant that the statute is unreasonable in prohibiting the teaching of a foreign language below the eighth grade, while permitting it to be taught to those more advanced. We must again look to the purpose of this enactment. The Legislature might well have felt that it was of vast importance that those of tender years should have at that early period instilled in their minds the lessons to be taught only through the use of the English language; that, if foreign languages are to be taught for "cultural effect," it shall be only after the child has been "rooted and grounded" in the recognized language of our country. The harmful effects of non-American ideas inculcated through the teaching of foreign languages might, in the judgment of the Legislature, be avoided by limiting teaching below the eighth grade to the medium of English. We do not regard the statute as making an arbitrary or unreasonable classification, or as in any manner violating these constitutional provisions.

38 Statutes of like effect have been enacted in Nebraska, Kansas, Maine, Washington, Arkansas, Indiana, New Hampshire, Wisconsin, and perhaps other states. So far as we are advised, none of such statutes have been held to be unconstitutional. In Nebraska

istrict of Evangelical Lutheran Synod v. McKelvie, 175 N. W. 531, A. L. R. 1688, the Supreme Court of Nebraska sustained the constitutionality of the statute of that state, which is almost identical with the statute under consideration.

We hold this statute to be constitutional and a proper exercise of ne police power of the state.

It follows that the conviction of the defendant upon the stipulated acts was warranted, and the judgment of the lower court is therefore affirmed.

Stevens, Arthur, and De Graff, JJ., concur.
Evans, C. J., and Weaver and Preston, JJ., dissent.

EVANS, C. J.:

I am constrained to disagree with the majority opinion. The construction of our statute adopted therein is a very severe one. Under elementary rules a criminal statute which creates an offense that is malum prohibitum should be construed strictly in the sense that nothing shall be added to it by mere implication. The statutory prohibition under consideration here is contained in section 1, c. 198, 38th G. A., and is as follows:

"Section 1. Secular Subjects—Instruction in—English Language Medium of—Foreign Languages—Where Permitted. That the medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools in hereby prohibited."

39 The precise question presented in this case is whether the teaching of reading a foreign language in a private religious school, for the purpose of enabling a child to worship in a common language with its parents and to take religious instruction therein, such as the reading of the catechism, etc., is a violation of this statute. As stated in the majority opinion, the evidence in this case was all contained in a written stipulation. It appears therefrom that the defendant was a teacher in a parochial school belonging to a church or religious denomination, and that it was his duty as such to give instruction in secular subjects, and also in the tenents of the church, so as to prepare the children for confirmation in the church according to its belief and practice, which confirmation was usually attained at about the age of 13. All secular subjects taught in such school were so taught in the medium of the English language as required by the statute. Religious instruction was given in a foreign language, namely, the language of the parents of the children. The prosecution is based upon the general proposition that the teaching of "reading" of any language is the teaching of a secular subject. This is the implication which broadens this statute beyond the terms of any prohibition contained therein. I cannot assent to it. "Reading" as a study is simply a means of acquiring a language. It is language study. Reading as an acquisition, as a thing learned, is a means of study of all subjects of every nature, whether they be

called secular or religious. The majority opinion properly concedes that this prohibition does not restrict the right of parents at home or through instructors in a private or parochial school to worship according to their faith and religious belief in whatever language they choose. This concession is clearly necessary to save the constitutionality of the statute. Section 3, article 1, of the Constitution of Iowa provides:

"The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Obedient thereto, the peace officer has never invaded the sanctuary of any religious denomination in Iowa. It goes without saying that the free exercise of religion is impossible without the free use thereof of such language as the worshiper may choose. Ordinarily that language is his native language, or at least the language with which he is best familiar. There is no pretense in this statute at interference with that right. Ability to speak and to read a language is essential to intelligent worship. Concededly the parents had a right to worship in their own language. Necessarily the children had a constitutional right to worship in the same language. Is the study of the language of worship to be deemed necessarily a secular subject? Is "reading" as a study or "reading" as an acquisition when it is resorted to for the purposes of intelligent worship to be deemed necessarily a secular subject, or may it also be deemed as a religious subject? By the terms of the written stipulation herein the study or teaching of reading of the foreign language was only for the purpose of worship and religious instruction. We must not depart from the stipulation of facts. The one provision of the stipulation upon which the prosecution builds its argument is that the text-books used in the study of "reading" were the ordinary text-books used in all schools for that purpose, and that the subjects of the reading lessons were secular subjects. It is argued therefore that this fact made the study a secular subject. This implies that the student of the language is to be deemed as studying the variety of subjects which appear in the reading lessons of the text-book. The implication thus indulged in is one which arises entirely outside of the statute under consideration. In my judgment it is not a sound implication as a matter of fact. Lessons for the teaching of "reading" must have subjects in order to mean anything. These lessons are not selected for the subjects they contain, but for the adaptability of the words and sentences contained therein to the stage of progress of the learner in the study of the language. I think, therefore, that the subjects of the lessons of the text-book used in the study of "reading" does not fix the character or the purpose of the study. I think it clear also that "reading" as a study and as a necessary part of religious instruction is not to be deemed as a secular subject within the meaning of the prohibition of this statute.

We are committed to the proposition that the motive or purpose of a given conduct is to be considered in determining whether it be secular or religious. State v. Amana Society, 132 Iowa, 304, 109 N. W. 894, 8 L. R. A. (N. S.) 909, 11 Ann. Cas. 231. The defendant in

the cited case was an incorporated body. Its membership consisted of a religious community. Their religious beliefs were carried into their practical everyday life. They held all property in common; all members engaged in service; they owned lands and factories and merchandise and live stock into values of hundreds of thou-
42 sands of dollars. The question involved in the suit against them was whether they were engaged in secular pursuits. We held that they were not, and that all their activities of everyday life, such as would ordinarily be deemed and be in fact secular, were nevertheless the exercise of their religious beliefs, and that these activities were their response to their sense of religious daily duty. In another division hereof I shall incorporate excerpts from the opinion in this case, as well as from other opinions.

Having held in the cited case that the operation by the Amana Society of its factories, mills, stores, farms, all apparently done by the ordinary methods of business, was not a secular business because its dominant motive was religious, how shall we now say that the study of "reading" for the stipulated purpose of religious instruction and worship is secular and not religious? To so hold is, in my judgment, to trench upon the constitutional provision which I have above quoted. The courts of this country in all jurisdictions have quite uniformly construed all penal statutes so as to exclude their operation from the religious domain, and so as to protect the absolute freedom guaranteed by the Constitution of religious belief and exercise. If there is any exception to this rule it has arisen only in relation to extraordinary practices which disturb the public order or shock the sense of fundamental Christian morality; such, for instance, as polygamy. In the case of Trinity Church v. United States, 143 U. S. 457, 12 Sup. Ct. 511, 36 L. Ed. 226, an analogous question was before the Supreme Court of the United States, wherein that court construed a federal statute, which prohibited any person from paying the transportation or in
43 any way assisting the importation or migration of any alien into the United States under contract or agreement, express or implied, to perform labor or service of any kind in the United States. Trinity Church had entered into contract with a rector in England that he should come to New York and serve its parish there. Such action on the part of Trinity Church was within the literal terms of the prohibiting act. The Supreme Court, however, construed the act as not applying to the case, notwithstanding its all-inclusive terms, because to so construe it would be an interference with the religious freedom guaranteed by the Constitution, and because such an act was inherently innocent, and was therefore beyond the reach of a penal statute. For convenience of reference excerpts from this opinion will be set out later.

An act similar to ours was enacted in Nebraska, and was construed by the Supreme Court of that state. It was construed as not prohibiting the teaching or studying of foreign languages for religious purposes, even though its language was broad enough to include such prohibition. Nebraska District of Evangelical Luth-

eran Synod, etc., v. McKelvie, 175 N. W. 531, 7 A. L. R. 16
The argument of the court in that case was that the affirmative p
pose of the legislation was to require the teaching of the Engl
language and to make it the medium of secular instruction, a
that as long as such dominant purpose was carried out in the p
ticular school the additional study of foreign languages for religi
purposes should not be deemed prohibited. It was also held th
such prohibition would be an interference with religious freed

Instead of pursuing farther mere argument of mine up
44 the question, I set forth in the following division excer
from the cited cases, which to my mind constitute a quite su
cient argument. Let it be borne in mind that in the instant case t
defendant met every affirmative requirement of the statute, and tau
a full course of secular subjects suitable to the grades, and used t
English language as the medium of all such teaching, and th
includes the subject of "reading" in English. When we reflect th
the secular and the religious blend in every normal human life
that the secular serves religion, and religion, if it be true, inf
ences the secular, it must be true that the zone of division is a bro
and indefinite one, and that a sharp and definite line of demarcati
cannot be drawn. I only contend that the study of language, i
cluding its "reading," may be religious, even though it be true th
it may also be secular. If such study may be religious, then und
the stipulation of facts in this case it was pursued for religious pu
poses. Even in the absence of such definite stipulation, I wou
think that the mere rule of strict construction of penal statutes wo
require us to adopt the more innocent construction.

II. In the case of State v. Amana Society, 132 Iowa, 304, 1
N. W. 894, 8 L. R. A. (N. S.) 909, 11 Ann. Cas. 231, the contenti
of the state was that this society, being organized solely as a religi
society, was unlawfully and in violation of its charter rights e
gaged in business and manufacturing pursuits for financial pu

Quoting from the opinion on page 314 of 132 Iowa, on pa
45 898 of 109 N. W. (8 L. R. A. (N. S.) 909, 11 Ann. C
231):

"Theoretically the distinction pointed out may be correct. Pr
tically religion may not be so completely separated from the affa
of this life. Theology, the science of religion, * * * i
steadily insisted upon connecting religion with the life men le
and the things they do in this world. The great religious struggl
of the past have come in most cases from the undertaking of m
to impose on other men, not their religion, but their science of r
ligion and against this, rather than religion, as defined by the A
torney General, the law has interposed its shield of protectio
When theologians formulate their conclusion that anything su
as a particular mode of life is essential to the attainment of t
promised benefits of a religion, it is not for the courts, by resorti
to the definitions of lexicographers, to perform the ungracious,
not herculean, task of determining whether this is so. The anti
pated advantages of nearly every religion or creed are made depe

t on the life its followers live, and the criticisms most often heard e that the exalted doctrines of righteousness professed are too fre-ently forgotten in the ordinary pursuits of life, and that the con-sts for wealth are waged with the rapacity of beasts of prey. urely a scheme of life designed to obviate such results, and by re-oving temptations and all the allurements of ambition and ava-ce to nurture the virtues of unselfishness, patience, love, and serv-e, ought not to be denounced as not pertaining to religion, when s devotees regard it as an essential tenet of their religious faith.

"In ascertaining whether various properties of the society are for ligious purposes, these should be viewed somewhat from the stand-oint of its members. From that viewpoint its different enterprises e clearly within the rule stated by the Attorney General that this ust 'be convenient and appropriate to religious work and cere-onies and to the worship of God according to their belief'; for it indispensable to their religious faith that they own their property common and live a communal life. As a religious principle they ave agreed to this and to devote their common labor to their com-on support. None can be said to derive any pecuniary benefit erefrom in the sense in which that expression is used in the stat-e. No dividends are declared, and no money is given to any mem-er, save to meet the bare necessities of the most economical ex-tence. * * *

"On these considerations we reach the conclusion that the defend-ant society has not exceeded its powers as a religious cor-poration. Secular pursuits, such as those conducted by it, are not ordinarily to be regarded as incidental to the powers a religious corporation for the very good reason that ordinarily ey bear no necessary relation to the creed it is organized to pro-ote. But, where the ownership of property and the management business enterprises in connection therewith are in pursuance of nd in conformity with an essential article of religious faith, these nnot be held, in the absence of any evidence of injurious results, be in excess of the powers conferred by the law upon corporations. e have discovered no decision touching the question decided; but, n view of the spirit of tolerance and liberality which has pervaded ur institutions from the earliest times, we have not hesitated in ving the statute an interpretation such as is warranted by its lan-uage and which shall avoid the persecution of any and protect all the free exercise of religious faith, regardless of what that faith ay be. Under the blessings of free government, every citizen hould be permitted to pursue that mode of life which is dictated y his own conscience, and if this, also, be exacted by an essential gma or doctrine of his religion, a corporation organized to enable m to meet the requirement of his faith is a religious corporation, nd as such may own property and carry on enterprises appropriate the object of its creation."

In the Trinity Church Case the Supreme Court of the United tates said (143 U. S. 467, 12 Sup. Ct. 512, 36 L. Ed. 228):

"All laws should receive a sensible construction. General ter
should be so limited in their application as not to lead to injustice, o
pression, or an absurd consequence. It will always, therefore,
presumed that the Legislature intended exceptions to its langua
which would avoid results of this character. The reason of the
in such cases should prevail over its letter. * * *" 143 U.
465, 12 Sup. Ct. 514, 36 L. Ed. p. 230. "But beyond all of th
matters no purpose of action against religion can be imputed to
legislation, state or national, because this is a religious peop
* * * 'Religion, morality, and knowledge being necessary
good government, the preservation of liberty, and the happines
mankind, schools and the means of education shall forever be e
couraged in this state.' * * * There is no dissonance in th
declarations. There is a universal language pervading them
having one meaning; they affirm and reaffirm that this is a religio
nation. These are not individual sayings, declarations
47 private persons; they are organic utterances; they speak th
voice of the entire people. While because of a general reco
nition of this truth the question has seldom been presented to t
courts, yet we find that in Updegraph v. Com., 11 Serg. & R. 394, 4
it was decided that 'Christianity, general Christianity, is, and alwa
has been, a part of the common law of Pennsylvania; * *
not Christianity with an established church, and tithes, and spiritu
courts; but Christianity with liberty of conscience to all me
* * * The construction invoked cannot be accepted as corre
It is a case where there was presented a definite evil, in view of whi
the Legislature used general terms with the purpose of reaching
phases of that evil, and thereafter, unexpectedly, it is developed th
the general language thus employed is broad enough to reach ca
and acts which the whole history and life of the country affir
could not have been intentionally legislated against. It is the du
of the courts, under those circumstances, to say that, however bro
the language of the statute may be, the act, although within the lett
is not within the intention of the Legislature, and therefore cann
be within the statute."

In the cited case of Nebraska District of Evangelical Luther
Synod, etc., v. McKelvie, 175 N. W. 531, 7 A. L. R. 1688, the S
preme Court of Nebraska said:

"The operation of the Selective Draft Law (Act May 18, 1917,
15, 40 Stat. 76, U. S. Comp. St. 1918, Sections 2004*a*-2004*k*) d
closed a condition in the body politic which theretofore had be
appreciated to some extent, but the evil consequences of which h
not been fully comprehended. It is a matter of general public
formation, of which the court is entitled to take judicial knowled
that it was disclosed that thousands of men, born in this country
foreign language speaking parents, and educated in schools taught
a foreign language, were unable to read, write, or speak the langua
of their country, or understand words of command given in Engli
It was also demonstrated that there were local foci of alien ene

entiment, and that, where such instances occurred, the education given by private or parochial schools in that community was usually found to be that which had been given mainly in a foreign language. The purpose of the new legislation was to remedy this very apparent need, and by amendment to the school laws make it compulsory that every child in the state should receive its fundamental and primary education in the English language. * * * That the same character of education should be had by all children, whether of foreign-born parents, or of native citizens. The ultimate object and end of the state in thus assuming control of the education of its pupils is the upbuilding of an intelligent American citizenship, familiar with the principles and ideals upon which this government was founded, to imbue the alien child with the tradition of our past, to give him the knowledge of the lives of Washington, Franklin, Adams, Lincoln, and other men who lived in accordance with such ideals, and to teach him love for his country, and hatred of dictatorship, whether by autocrats, by the proletariat, or by any man, or class of men. * * * The state should control the education of its citizens far enough to see that it is given in the language of their country, and to insure that they understand the nature of the government under which they live, and are competent to take part in it. Further than this, education should be left to the fullest freedom of the individual. * * * If a child has attended either the public or private school for the required time, it could not have been the intention of the Legislature to bar its parents, either in person or through the medium of tutors or teachers employed, from teaching other studies as their wisdom might dictate. There can be no question of the cultural effect of the knowledge of a foreign language. * * * If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would be an invasion of personal liberty, discriminative, and void, there being no reasonable basis of classification; but if such instruction can be given in addition to the regular course, and not so as to interfere with it, then equality and uniformity results, and no one can complain."

III. I do not discuss the question of constitutionality, because the majority opinion in effect concedes that if the statute is an interference with religious liberty, it would be unconstitutional. There is no room for difference therefore between us at that point. I think that represents the point of difference between us, far as the question of interference with religious liberty. The majority hold otherwise, and that represents the point of difference between us, so far as the question of constitutionality is concerned, I would reverse.

Weaver and Preston, JJ., join in this dissent.

Be It Remembered, That on the 12th day of February, 1921, the following proceedings were had in the Supreme Court of Iowa, to-wit:

STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Appeal from Bremer District Court.

In this cause, the Court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby affirmed, and that Writ of Procedendo issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal taxed at $—, and that execution issue therefor.

I hereby certify that the foregoing is a full, true and complete copy of the judgment entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 26th day of July, A. D. 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of Supreme Court.

51 Filed Mar. 7th, 1921. B. W. Garrett, Clerk of Supreme Court.

In the Supreme Court of Iowa.

No. 33509.

STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Notice of Intention to Petition for Rehearing.

To the State of Iowa, Appellee, and
To Ben I. Gibson, Attorney General:

You are hereby notified that the appellant, August Bartels, intends to petition the Supreme Court of Iowa for a rehearing in the above entitled cause, opinion in which was filed by the Supreme Court on February 12, 1921, and that his petition for rehearing will be filed with the Clerk of said court within the time provided therefor by the statute.

PICKETT, SWISHER & FARWELL AND
F. P. HAGEMANN,
Attorneys for Appellant.

Due and legal service of the foregoing notice of intention to petition for rehearing is accepted at Des Moines, Iowa, on this 4th day of March, 1921, and receipt of copy thereof acknowledged.

BEN J. GIBSON,
Atty. Genl.;
B. J. FLICK,
Asst. Atty. Genl.,
Attorney General of the State of Iowa,
For Appellee.

Due and legal service of the foregoing notice of intention to petition for rehearing is accepted at Des Moines, Iowa, and receipt of copy thereof acknowledged this 7th day of March, 1921.

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.

52 Filed April 6th, 1921. B. W. Garrett, Clerk of Supreme Court.

In the Supreme Court of Iowa, May Term, 1921.

STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant,

Criminal.

Appeal from Bremer County District Court.

Hon. M. F. Edwards, Judge.

Ben I. Gibson, Attorney General,
Attorney for the State.
Pickett, Swisher & Farwell, and
F. P. Hagemann,
Attorneys for Appellant.

Petition for Rehearing.

I, the undersigned attorney for the state, Appellee, hereby accept due and legal service of the within Petition for Rehearing, and acknowledge receipt of copies thereof this 6th day of March, 1921.

BEN J. GIBSON,
Atty. Gen'l,
B. J. FLICK,
Asst. Atty. Gen'l,
Attorney for State, Appellee.

The opinion in this case was filed February 12, 1921, and found in 181 Northwestern, at page 508.

53 *The opinion in this case was filed February* 12, 1921, and *is found in* 181 *Northwestern, at page* 508.

Notice of Rehearing.

Notice of Intention to Petition for Rehearing was duly given and served and filed with the Clerk of this court within thirty days from the time the opinion was filed, all as provided by the statute and rules of the court.

A rehearing is asked on the following grounds:

First. The provision of the language act prohibiting the teaching of a foreign language as an additional subject in the grades of a private school is unconstitutional in this:

(1) It abridges the privileges and immunities of the defendant and deprives him of liberty and property without due process of law within the meaning of the Fourteenth Amendment to the Federal Constitution.

(2). It abridges the inalienable rights of the defendant within the meaning of Section 1 of Article I of the Constitution of Iowa.

(3) It prohibits the free exercise of religion within the meaning of Section 3 of Article I of the Constitution of Iowa.

Second. The foreign language was taught solely for a religious purpose and as a part of the religious instruction of the defendant's school, and the act of the defendant in so teaching a foreign language is not within the letter of the statute and therefore not prohibited.

Third. Under the circumstances shown in this case, the act of teaching a foreign language was innocent and harmless, and therefore not within the spirit of the statute, although possibly
54 within the letter, and therefore the rule implying an exception to the general language of the statute in favor of such innocent and harmless act should obtain in this case, and this is especially true in that the implication is necessary to save the constitutionality of the statute.

55 *Brief.*

The Constitutional Question.

The statute is not within the police power of the legislature.

"In order that a statute or ordinance may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense or manifest evil or the preservation of the public health, safety, morals, or gen

ral welfare, that there is some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend toward the accomplishment of the object for which the power is exercised."

12 Corpus Juris, page 929, Sec. 441.
Buchanan v. Warley, 62 Law Ed. 149 U. S., p. 163.
Lawton v. Steele, 38 L. Ed. 385, p. 389.
Berea College v. Commonwealth of Kentucky, 53 L. Ed. 81, p. 90.
Lochner v. New York, 49 L. Ed. 937, p. 941.
Truax v. Raich, 60 L. Ed. 131, p. 135.
Yee Gee v. City, 235 Fed. 757, p. 763.
People v. Steele, 83 N. E. 236 (Ill.); 14 L. R. A. (N. S.) 361, p. 365.
People v. Weiner, 1916C L. R. A. 775, p. 778.

Therefore, in that the statute does not provide an appropriate remedy for the evil and there is no real or substantial connection between the evil and the provisions of the act, the statute is unconstitutional under the provisions of:

56 14th Amendment to the Federal Constitution Sections 1 and 3, Article I of the Iowa Constitution.

The natural rights of man are protected by the above constitutional provisions.

11 Corpus Juris, 800.
12 Corpus Juris, 934, Sec. 444.

The basis of classification in the language act is arbitrary and unreasonable, and therefore said act is void.

Nebraska District of Evangelical Lutheran Synod v. McKelvie, 175 N. W. 530, 535.

II.

The foreign language was taught in the instant case for religious purposes and as a part of the religious instruction, which instruction was not prohibited by the letter of the act.

State v. Amana Society, 132 Iowa, 304.
Trinity Church v. United States, 36 L. Ed. 226, 228, 229.

III.

Under the circumstances of this case, the act of teaching a foreign language was harmless and innocent, therefore such act is not within the spirit of the statute, although possibly it is within the letter.

Therefore an exception should be implied so as to avoid maki
such harmless act criminal.

State v. Gish, 168 Iowa, 70, 78.
State v. Botkin, 71 Iowa, 87-89.
Back v. Back, 148 Iowa, 223, 229.
57 Trinity Church v. United States, 36 L. Ed. 226, 228, 229.
De Hasque v. Railway Co., 173 Pac. 73.
Hunter v. Coal Co., 175 Iowa, 245, 268 and 269 and a
thorities therein cited.
Fox v. Washington, 59 L. Ed. 573, 575.

It is essential to imply such exception in order to save the cons
tutionality of the statute. Statutory rules of construction requ
such exception to be implied where even serious doubt as to co
stitutionality exists.

Hunter v. Coal Co., 175 Iowa, 245, 268 and 269, and a
thorities therein cited.

Argument.

The facts are correctly stated in the opinion.

While the above is true, two-all-important facts are not treat
as though they had any materiality in the case. That reading w
taught in English with English as the exclusive medium of instru
tion would hardly be gathered by a reading of the majority opini
Likewise the majority apparently attaches no importance to the fa
that not only were the compulsory branches including readi
taught in English, but that the standard of excellence prevailing
the public schools in the same community was in no way superi
to the standard maintained by the defendant in his parochial scho
It manifestly is important that the children attending the defe
ant's school received every advantage of an English education th
they could have received in the public school and that the
58 secular education in English did not suffer by reason of th
fact that they were taught religion and reading in Germa
in the parochial school. Religion and reading in German were ad
tional subjects and in no wise were permitted to interfere, even
the slightest, with the education of the children in the compulso
secular branches in the English language. The stipulation of fa
admits every fact stated above.

I.

The Constitutional Question.

With all due deference to the Justice writing the majority opini
and the Justices concurring with him, we submit that the real qu
tions involved are scarcely touched.

The majority discusses the long established policy of the Sta
Likewise the majority points out what is considered the manif

vil which was intended to be remedied by the language act, as ollows:

"The advent of the great world war revealed a situation which nust have appealed very strongly to the legislature as justifying the enactment of this statute. Men called to the colors were found to e in some instances, not sufficiently familiar with the English lan- uage to understand military commands or to read military orders. t was to meet this situation, to encourage the more complete assimi- ation of all foreigners into our American life, to expedite the full Americanization of all our citizens, that the legislature deemed this statute for the best interests of the State * * *.

59 "The policy of the State is apparent and the evil sought to be remedied is manifest."

That men called to the colors, as well as other citizens, should know English, is manifest. Likewise proper legislative action which will assist the "melting pot" to work more effectively is desirable.

However, the existence of even a "manifest evil" is not sufficient of itself to uphold the constitutionality of a legislative act. In addi- tion to the "evil," it must appear that there is a "clear, real and sub- stantial connection" between such "manifest evil" and the "actual provisions" of the act. Likewise, it must appear that the act of the legislature tends in "some plain, appreciable and appropriate man- ner toward" the remedying of the evil.

The evil may be conceded, but if the other requirements, or either thereof, are wanting, the statute falls under the ban of the consti- tution, state and federal.

After pointing out the four ends which the majority finds the legislature intended to accomplish by the statute, and which we hereinafter quote, the majority says:

"With the wisdom of the act of the legislature in passing the statute in question as a means of meeting this situation and seeking to remedy the same, we have no concern whatever. That question was wholly for the determination of the General Assembly."

Pursuing the same thought, the majority says:

"There is, as we view it, no inherent right, no 'privilege' to teach German to children of tender years that cannot lawfully be

60 denied by the Legislature when, in its judgment and discre- tion, the exercise of such right under existing conditions is inimical to the best interests of the state."

In other words, the choice of means for remedying the evil, the majority holds, are exclusively within the "judgment and discre- tion" of the legislature and constitute a matter with which the courts "have no concern whatever."

Here we take sharp issue. We do not mean that the courts should usurp the province of the legislature; but the constitution is the fundamental law. Decisions of courts are to be regulated by the fundamental law, and when a constitutional question is raised, it is

necessary to determine what is the law, whether the constitution o the statute. Acts of the legislature which conflict with the consti tution, are a nullity and should be declared such. The constitutio expresses the highest degree of Americanism. In arguing fo Americanism, courts must not lose sight of the instrument whic preeminently expresses the doctrine of Americanism. The propa ganda is un-American that claims that legislatures have power t enact any measure, police or otherwise, for the government of so ciety that in their judgment and discretion is necessary or desirable We do not mean that courts are justified in declaring a law uncon stitutional because they would not have supported the measure ha they been members of the legislature. On the other hand, the du of the court is not performed by finding that there is a manife evil and the legislature intended to remedy the same by th
61 act in question. Whether the legislature will attempt t remedy a manifest evil is within its discretion, but if it do attempt it, the legislation to that end must meet the constitutiona test.

The rule when and how the police power may be exercised i well set forth in 12 Corpus Juris, page 929, section 441, as follow

"In order that a statute or ordinance may be sustained as an e ercise of the police power, the courts must be able to see that th enactment has for its object the prevention of some offense or mani fest evil or the preservation of the public health, safety, morals, o general welfare, that there is some clear, real and substantial conne tion between the assumed purpose of the enactment and the actua provisions thereof, and that the latter do in some plain, appreciabl and appropriate manner tend toward the accomplishment of the ob ject for which the power is exercised."

Here the court has found the "manifest evil." What the ma jority has failed to find is that "clear, real and substantial conne tion between the assumed purpose" of the language act and "th actual provisions" of the language act. Likewise the majority ha failed to point out "some plain, appreciable and appropriate man ner" in which the language act tends "toward the accomplishme of the object" for which the majority say the act was passed.

Authorities supporting the rule laid down in Corpus Juris are ove whelming. A few with pertinent excerpts will be found at the en of this division of the argument.

62 The "manifest evil" found by the majority does not con sist in citizens or children knowing a foreign language There is nothing in the opinion indicating that knowledge of a foreign language is of itself wrongful or harmful to the individua or to the state. The "manifest evil" found by the majority consist in citizens not knowing the English language and the fact, if it be a fact, that the melting pot needs assistance.

In what respect does inability to read or speak a foreign languag assist in remedying this "manifest evil?" What is accomplished by prohibiting the study of a foreign language? The reason for the

rohibition does not appear in the majority opinion, for the very
ood reason, we believe, that there is nothing to say in its behalf.
lanifestly, knowledge of a foreign language is in itself perfectly
armless. There is nothing inherently wrong with it. It is not
oisonous per se; it is not un-American per se. If such knowledge
s not cultural, it at least constitutes knowledge of an innocent sub-
ect which may, and often does, prove useful in numerous ways.
Where children obtain an English education in all of the compul-
ory branches, including reading and American citizenship, and
he instruction given is equivalent and in all respects maintains a
tandard equal to that of the public schools of the same community,
n what possible way can knowledge of a foreign language, acquired
t the same time the pupils are getting their English education in
he common branches and in the same school and through the same
teacher, in any manner detract from their English educa-
83 tion, their knowledge of Americanism, or their love of coun-
try? Why, then, the prohibition? In what "way," clear,
direct or remote, does it tend to remedy the "manifest evil" or assist
he melting pot? Appropriate methods of remedying the evil and
f assisting the melting pot exist. Why, then, is a legislative act,
which interferes with constitutional rights, to be upheld, and why
he hesitancy to declare it unconstitutional? There is no reasonable
elation between the evil and the act. The prohibition does not
ive the children a knowledge of the English language or an Eng-
ish education and it does not assist the melting pot. A foreign lan-
guage is no more poisonous than the English language and anti-
American sentiment can be taught in English as well as in a for-
eign language. The remedy must be affirmative and not negative.

The majority opinion states the purpose, or "design," of the lan-
guage act, as follows:

"The manifest design of this language statute is to supplement
he compulsory education law by requiring that the branches enu-
merated to be taught shall be taught in the English language and
in no other."

We have no complaint here. But every "branch enumerated" in
he statute to be taught was "taught in the English language and
in no other" in the defendant's school. The stipulation of facts so
states. So the defendant met every purpose and "design" of the
ct as detailed by the majority. A foreign language, however, is
not an "enumerated" branch. It is the prohibition of teach-
64 ing a foreign language as an additional subject of which we
complain, and the majority does not say that such prohibi-
tion was one of the designs of the act.

The prohibition of a foreign language study as an additional sub-
ject has no clear, real or substantial connection with the design of
the act. Moreover, it has no plain, or appreciable tendency toward
accomplishing the object of the act, which object this court says is
that our children should be educated in English and should be
taught Americanism and patriotism.

The majority holds that the legislature has attempted to remedy the evil and accomplish its "design" (1) by requiring that the compulsory branches be taught in English the same as they are required to be taught in the public schools, and (2) by prohibiting the study of a foreign language as an additional subject in the grades. Just how the prohibition or second element has any connection to the first or with the object or design is not explained in the opinion.

As already stated, we are firm in the belief that the state should require that private schools do at least as good work as the public schools are doing and that all compulsory branches be taught in English. The stipulation of facts admit that the requirement as to the English education was fully met by the defendant's school. That being admitted, the sole question is: Does the statute prohibit the study of a foreign language as an additional subject, especially
65 where taught for a religious purpose, and if so, is such law constitutional? This is a question easily stated, if not easily decided.

To reiterate: The power of the state to require that pupils of private and parochial schools shall have all the advantages of an education in English and all of the advantages of learning Americanism and love of country that the public schools give, is undoubted. But what relation has the prohibition in question to the end? The remedy is not appropriate; it does not tend to accomplish the end.

Would not acts along the lines hereinafter suggested be appropriate?

For example, we have no doubt of the state's power to require that teachers of parochial schools be the holders of teachers' certificates qualifying them to teach in the public schools. Such a measure has not been enacted into law; we believe it should be. Further we have no doubt of the state's power to scrutinize the Americanism and moral character of those granted teachers' certificates more closely than it does, and respectfully suggest that the most effective method of insuring the teaching of Americanism and instilling in the child the love of country and intense patriotism would be by securing properly qualified teachers who are patriotic and who are American through and through. No other character of person is suitable to teach in any school in the state, public or private. Unfortunately we have no law putting this essential into practice. So far as a law can help the "melting pot" by education of the children, would not such a law be clearly appropriate to the end, while prohibi-
66 tion is wholly inappropriate? While the state should not specify the actual text books to be used in the private schools any more than it does in the public schools, it might well require that those selected by the private schools be subject to the approval of state authorities to the end that the text books be proper and reasonably abreast of the times. We have no such law. Pupils in the private schools, just as pupils in the public schools, might be required to submit to periodical examinations by state authority. Within reasonable limits such a law properly administered would be helpful. We have no such law.

Doubtless other appropriate remedies to accomplish the ends men-

tioned by the majority might be suggested, but the above will suffice. Every one of those suggested has some clear relation to the end sought, and tends to remedy the evil found by the court, while the remedy of prohibition in the language act does not meet the constitutional test in any respect, and is clearly without value as a corrective measure.

A compulsory education law with requirement that the compulsory subjects be taught in English, is well enough as far as it goes, but while additional subjects are permitted, and necessarily must be permitted, the prohibiting of the teaching of a foreign language as an additional subject is adopting a means that does not accomplish the ends sought, and does not remedy the evil, but on the other hand such prohibition interferes with the rights, privileges and immunities of citizens, and so far as one subject is concerned, places a
67 premium on ignorance and a ban on intelligence, and in our humble judgment, is un-American rather than anti-foreign.

We said above that the prohibition of a foreign language study as an additional subject places a premium on ignorance and a ban on intelligence. We mean just that. We will go further. It is a step economically wrong, tending to place America at a disadvantage in its commercial life. Economists and business men all recognize, and without dissenting voice, call attention to a fact, known by every thinking person, that if America expects to hold its own in foreign commerce, especially with the Latin countries, it must have citizens who know the language of those countries and are able to speak and read them intelligently. Not only must we have citizens who know such foreign languages, but they must learn the geography, history, virtues, vices, fads, and foibles of those to whom we seek to sell the products of the American farm and the American factory. No state may be of higher service to future American commerce than to offer in its public schools in the principal cities of the state an elective course in Spanish. The study might well be begun and continued through the grades. That it might be done without injury to the students' Americanism and patriotism and English education is too plain to require argument. True, in the instant case, the foreign language is German, but if the United States does not need elementary public schools teaching German, as we need them teaching Spanish, it is because our citizens of German extraction, to a limited extent, are giving the instruction in their
68 private schools. The need of Spanish and French is a crying need recognized by all thinking men. If this language act means what the majority holds and is adopted by other states and enforced, the time soon will be here when we will have a like crying need for citizens knowing German. It admits of no argument that if we are to have citizens who know foreign languages, we must permit the study of the foreign languages in the grades. The study cannot begin too early. To wait until the high school or college will not accomplish the purpose. Few beginning the study at such time ever become proficient in the language.

That there is no reasonable connection between prohibiting the study of a foreign language as an additional subject and the object

of the act appears from other parts of the opinion. The majority further says:

"The evident purpose is that no other language shall be taught in any school, public or private, during the tender years of youth, that is, below the eighth grade, to the end (1) that pupils in our schools, public or private, shall be educated in the language of this country, so as to be able to read, write, and spell the same; (2) that time ordinarily devoted to such objects be not diverted to others; (3) that pupils be impressed in their youth that English is the language of this country, without a rival, even though another be spoken at home, and (4) that an education such as is given in the common schools be extended to pupils in the private schools and that
69 the standard of education shall be uniform throughout the State.

Let us briefly consider these four ends separately:

(1) That pupils in our schools, public or private, shall be educated in the language of this country, so as to be able to read, write, and spell the same."

No one can take exception to this as being a proper subject for a law. If the compulsory branches, including English reading, are taught in English, with English as the medium of instruction and the standard in the compulsory branches is maintained, then are not the pupils "educated in the language of this country so as to be able to read, write, and spell the same?" Does an additional subject, even a foreign language subject, detract from that English education or ability "to read, write or spell?" If so, it would be interesting to have this court point out wherein exists such interference.

(2) The time ordinarily devoted to such object be not diverted to others."

In saying the above, does the majority realize that it has placed the ban upon domestic science, manuel training, music, agriculture and even religion, since all are taught as additional subjects in the schools of the state, public and private, with the exception, of course, that religion is not taught in the public schools? The teaching of these additional branches divert- the attention of the pupils thereto. The words of the majority may be proper if we have an understanding as to what constitutes the "time ordinarily devoted to such object." The time ordinarily devoted to the object, we assume,
70 is sufficient to maintain a reasonable standard that enables the pupils to finish the grades and satisfactorily to master the compulsory subjects within the time ordinarily devoted to the grades. If that is what the majority means, we concur, but ordinarily that leaves a certain amount of time of the pupil to devote to additional subjects to be selected by the respective schools. And, may a foreign language be one of the additional subjects, and if not, why not?

"(3) That pupils be impressed in their youth that English is the language of this country, without a rival, even though another be spoken at home."

We have no quarrel with this statement; but does ability to read two languages have any tendency to prevent the impression "that English is the language of this country without a rival?" To accomplish that result is it necessary to prohibit a child from acquiring a reading and speaking knowledge of a foreign language? Is not the court here applying the ancient saw, "where ignorance is bliss 'tis folly to be wise?" If this is the intent of the language act, is the prohibiting of a foreign language study necessary to accomplish the results or even an appropriate means to that end?

"(4) That an education such as is given in the common schools be extended to pupils in the private schools and that the standard of education shall be uniform throughout the State."

Manifestly a standard of excellence equal to that in the common schools should be maintained in the private schools. We think that the children attending private schools are fairly entitled to
71 obtain from them as much as they could obtain from the public schools in the same community. Not only did the defendant's school meet this end—but there is no reason why private schools generally should not meet it.

If legislation is required to secure the end, it must be appropriate thereto; it must be such as will bring the private schools to the standard by requiring teachers properly qualified educationally, patriotically and morally. Such end is not furthered by prohibiting the teaching a proper and useful language study which need not interfere in the slightest with the standard for an English education.

The Authorities.

We promise to cite authorities supporting the text in Corpus Juris hereinbefore quoted, as to limitations upon the police power, and they follow:

In Buchanan v. Warley, 62 Law Ed. 149 U. S., the Supreme Court of the United States in discussing the serious and difficult race problem, on page 163, used this pertinent language:

"That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control and to which it must give a measure of consideration may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges."

In Lawton v. Steele, 38 L. Ed. 385, at page 389, the Supreme Court of the United States, said:

72 "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with the private busi-

ness, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts."

In Berea College v. Commonwealth of Kentucky, 53 Law Ed. 81 Justice Harlan, speaking for certain members of the court, on page 90, said:

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property,—especially, where services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile state action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the 14th Amendment embraces "the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways.' "

In Lochner v. New York, 49 L. Ed. 937, the Supreme Court, on page 941, said:

"It must, of course, be conceeded that there is a limit to the valid exercise of the police power by the state. There is no dispute concerning this general proposition. Otherwise the 14th Amend-
73 ment would have no efficacy and the legislatures of the states would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext,—become another and delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint. This is not extended for. In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?"

In Truax v. Raich, 60 L. Ed. 131, on page 135, the Supreme Court, said:

"It is no answer to say, as it is argued that the act proceeds upon the assumption that 'the employment of aliens, unless restrained, will

a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself, and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor, is necessarily involved."

74 In the instant case "it is no answer to say 'that the language act proceeds upon the assumption' that unless the study of a foreign language is prohibited in the grades the public welfare will be imperiled.

In Yee Gee v. City, 235 Fed. 757 is contained a somewhat elaborate discussion upon the limitations of the police power. On pages 763 and 764, it is said:

"Is such a regulation within the rule of reason which must govern the courts in determining its validity? For that neither a municipality nor the Legislature of a state may competently interfere under the guise of a police regulation with the liberty of the citizen in the conduct of his business—legitimate and harmless in its essential character—beyond a point reasonably required for the protection of the public, is too thoroughly settled to call for any extended citation of authority in its support. And while at an earlier period the question of the reasonableness of regulatory measures was deemed more largely a legislative than a judicial one (Brown v. Maryland, 12 Wheat. 419, 6 L. Ed. 678; Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77), the more modern doctrine is that while every intendment is to be indulged in favor of the validity of an act of the Legislature of a state or of a city ordinance within the general power of the municipality to adopt, after all the question of the reasonableness of a regulatory measure in view of the apparent end sought is one for the courts to determine (Dobbins v. Los Angeles, supra, and cases there cited; Mugler v. Kansas, 123 U. S. 623, 8 Sup. Ct. 273, 31 L. Ed. 205). And the Supreme Court of California has fully recognized this principle. In Ex parte Whitwell, 98 Cal. 78,

75 32 Pac. 870, 19 L. R. A. 727, 35 Am. St. Rep. 152, in discussing the power of the courts in such cases, that court said:

'But it is not true that when this power is exerted for the purpose of regulating a business or occupation, which in itself is recognized as innocent and useful to the community, the Legislature is the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue such business or profession.'

"Another principal involved in the exercise of the police power, which it is hardly necessary to state, is that a mere legislative declaration that a business or occupation, harmless and innocuous in itself, is inimical to the public interest, either as a whole or as to some feature of its conduct, cannot make it so, unless by reason of surrounding conditions the declaration can be said to accord with the fact as based upon common observation and human experience. The Legislature cannot by its mere ipse dixit make that a guilty thing which is intrinsically an innocent one. It would be idle, for in-

stance, for the Legislature to declare that the occupation of farming or the work of the horticulturist was in its nature inimical to the public interest, and to undertake to regulate the hours of the day in which the work of those great industries should be prosecuted. Such an attempt would, under existing conditions, at least, be treated only with derision, as falling wholly without the bounds of reason, and as involving a mere arbitrary attempt to interfere with the liberty of the citizen. In other words, any attempt at police regulation which interferes with the individual in the conduct of an innocent and legitimate bus-ness must have an appreciable relation to
76 some public evil justly to be apprehended, and be reasonably calculated to avoid such evil. Beyond that the Legislature may not go."

In People v. Steele, 83 N. E. 236 (Ill.); 14 L. R. A. (N. S.) 361, on page 365, the court said:

"In Toledo, W. & W. R. Co. v. Jacksonville, 67 Ill. 37, 16 Am. Rep. 611, it was held that, if the law prohibits that which is harmless in itself, or requires that to be done which does not tend to promote the health, comfort, safety, or welfare of society, it will in such case be — unauthorized exercise of power, and it will be the duty of the courts to declare such legislation void. In Ritchie v. People, 155 Ill. 98, 110, 29 L. R. A. 79, 46 Am. St. Rep. 315, 40 N. E. 454, 457, it was said: 'The police power of the state is that power which enables it to promote the health, comfort, safety, and welfare of society. It is very broad and far-reaching, but is not without its limitations. Legislative acts passed in pursuance of it must not be in conflict with the Constitution, and must have some relation to the ends sought to be accomplished; that is to say, to the comfort, welfare, or safety of society. Where the ostensible object of an enactment is to secure the public comfort, welfare, or safety, it must appear to be adapted to that end. It cannot invade the rights of person and property under the guise of a mere police regulation when it is not such in fact; and, where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the court to determine whether it is really an appropriate measure for the promotion of the comfort, safety, and welfare of society."

77 In People v. Weiner, 1916 C. L. R. A. 775, the Illinois court, on page 778, said:

"While the courts will not pass upon the wisdom of an act concerning the exercise of the police power, they will pass upon the question whether such act has a substantial relation to the police power."

The Court further said:

"It must have some relations and be adapted to the ends sought to be accomplished. Rights of property will not be permitted to be invaded under the guise of police regulations. Bailey v. People, 19

Ill. 28, 54 L. R. A. 838, 83 Am. St. Rep. 116, 60 N. E. 98. The court must be able to see, in order to hold that a statute or ordinance comes within the police power, that it tends in some degree toward the prevention of offenses or the preservation of the public health, morals, safety, or welfare. It must be apparent that some such end is the one actually intended, and that there is some connection between the provisions of the law and such purpose."

On the same page the Court further said:

"Under the Federal and State Constitutions the individual may pursue, without let or hindrance, all such callings or pursuits as are innocent in themselves and not injurious to the public. These are fundamental rights of every person living under this government, and the legislature by its enactment cannot interfere with such rights. Frorer v. People, 141 Ill. 171, 16 L. R. A. 492, 31 N. E. 395; Ramsey v. People, 142 Ill. 380, 17 L. R. A. 853, 32 N. E. 364; Chicago v. Netcher, supra. The evidence shows that second-hand bedding does not necessarily convey infectious or contagious
78 diseases, and that a lawful business of selling or dealing in such may be carried on without danger to the public health. The test of reasonableness required in a statute based on the police power as to whether it is in violation of the Constitution is whether in its attempted regulation, it makes efficient constitutional guaranties and conserves rights or is destructive of inherent rights. Mehlos v. Milwaukee, 156 Wis. 591, 51 L. R. A. (N. S.) 1009, 146 N. W. 882, Ann. Cas. 1915C, 1102. It is the nature of the previous use, condition, or exposure in respect to contagious or infectious diseases which makes the use of second-hand material dangerous in the manufacture of matresses, comforters, and quilts, and not the mere fact of the previous use of such material by other persons. Greensboro v. Ehrenreich, 80 Ala. 579, 60 Am. Rep. 130, 2 So. 725. It is eminently proper to require that material be free from germs of contagion and infection before being used in mattresses, comforters, or quilts, whether the material be second-hand or new; but the possible danger to health or safety does not justify the absolute prohibition of a useful industry or practice where the danger can be dealt with by regulation."

The above case, which is supported by abundant authority, holds the doctrine that prohibition cannot be exercised under the guise of the police power where regulation will accomplish all legitimate ends. In such instance, the provisions of the act do not bear that clear relation to the end sought as to make it an appropriate remedy. In the instant case, laws insuring that children attending private schools will receive as good an English education as those
79 attending public schools, will be upheld. Likewise laws insuring that the children in private schools will be taught patriotism and Americanism to the same extent as they are required to be taught in the public schools will be upheld. But to prohibit an additional subject such as a foreign language to be taught in a private school under the guise of providing that the children attending private schools shall receive an English education and shall be

taught Americanism, is passing the bounds of a proper police regula-
tion and is invading the rights, liberties and immunities of the
patrons and pupils of the schools and denying to the teacher his
liberty of contract and right to a useful and harmless occupation.

The 14th Amendment to the Federal Constitution provides:

"* * * No State shall make or enforce any law which shall
abridge the privileges or immunities of citizens of the United States;
nor shall any State deprive any person of life, liberty or property
without due process of law. * * *"

Article 1 of the Iowa Constitution provides:

"Rights of Persons. Section 1. All men, are, by nature, free and
equal, and have certain inalienable rights, among which are those
of enjoying and defending life and liberty, acquiring, possessing
and protecting property, and pursuing and obtaining safety and
happiness.

"Religion. Sec. 3. The general assembly shall make no law
respecting an establishment of religion, or prohibiting the free exer-
cise thereof; nor shall any person be compelled to attend any place
of worship, pay tithes, taxes, or other rates, for building or
repairing places of worship, or the maintenance of any min-
ister or ministry."

The defendant and his pupils are citizens and the above consti-
tutional provisions protect, among others, the natural rights of man.

11 Corpus Juris, 800.
12 Corpus Juris, 934, Sec. 444.

We submit that the prohibition in the instant case is not valid
under the police power, and that the same does abridge the privileges
immunities and rights of the defendant within the above constitu-
tional provisions.

Classification.

We doubt that any good purpose could be served by argument that
the classification in the act renders the same unconstitutional, and
therefore content ourselves by again calling attention to Nebraska
District of Evangelical Lutheran Synod v. McKelvie, 175 N. W. 53
page 535, second column, where the court said:

"If the law means that parents can teach a foreign language, or
private tutors employed by men of means may do so, but that poor
men may not employ teachers to give such instruction in a class
school, it would be an invasion of personal liberty, discriminatory
and void, there being no reasonable basis of classification; but if such
instruction can be given in addition to the regular course, and not
so as to interfere with it, then equality and uniformity results, and
no one can complain."

81 It seems to us that the Nebraska court is right. Our language act as construed by the majority does exactly what the Nebraska court condemns. The Nebraska court holds that if the law means what the majority says our law means, then it is unconstitutional, because there is no reasonable basis of classification.

Indeed, we see no reason why, if a child below the ninth grade may be prohibited from studying a foreign language as an additional subject in a private school, where the same does not interfere with his English education, he may not be prohibited from studying a foreign language in the high school or in the college. Indeed, why, if he may be prohibited from studying it in a private school below the ninth grade, may he not be prohibited from studying a foreign language in the home or in the church? Grant the power of prohibition, then who shall say within what limits it may be exercised. If the child's knowledge of a foreign language was harmful, or, waiving that, more harmful than an adult's knowledge of the same language, then there might be some basis for classification. The prohibition is not necessary to insure any child's English education, love of country or patriotism. Regulations will do all of that. We submit, therefore, that the Nebraska court is right on this point, and the majority of our court is wrong.

82 II.

The Religious Question.

The able dissenting opinion of the Chief Justice in this case is a complete argument upon this branch of the case. No words of ours could carry as much weight as his and it is doubtful that we should do more than to rest this branch of the case upon what he has said. The following brief observations possibly are not out of place.

The majority admits that the statute is limited to secular subjects. The Chief Justice says:

"This concession is clearly necessary to save the constitutionality of the statute."

We are inclined to believe that the majority agree with the statement. However, if the majority agrees, as it apparently does, we cannot see how it upholds the general constitutionality of the statute. Under the constitution, a citizen's religious liberty is no more sacred than his civil liberty.

Mr. Justice Harlan, Mr. Justice Day concurring, in the Berea College case, 53 L. Ed. 81, on page, 91, said:

"Will it be said that the cases supposed and the case herein in hand are different, in that no government, in this country, can lay unholy hands on the religious faith of the people? The answer to this suggestion is that, in the eye of the law, the right to enjoy one's religious belief, unmolested by any human power, is no more sacred nor more fully or distinctly recognized than is the right to impart and receive instruction not harmful to the public. The denial of 83 either right would be an infringement of the liberty inherent in the freedom secured by the fundamental law."

The argument of the dissenting opinion in the case at bar squar
refutes what the majority says about the reading in German bei
a secular branch. The object of the branch is, under the stipul
tion, admitted to be solely for a religious purpose. That the te
books used were secular in character rather than religious in cha
acter was merely incidental and in no way changed the purpose o
object. The majority points out that other branches could reas
ably "be used in the same way in connection with religious instru
tion or religious belief." This may be true. In the Amana Soci
case, this court pointed out that there was scarcely any occupation
business that might not be so used. In that case, the court, as the
constituted, in holding that the mills, farms, live stock, factories a
other properties and the activities of the Society were for a religio
purpose, speaking through Mr. Justice Ladd, said:

"In ascertaining whether various properties of the society are h
religious purposes, these should be viewed somewhat from the stan
point of its members. From that viewpoint its different ente
prises are clearly within the rule stated by the Attorney General, th
this must 'be convenient and appropriate to religious work and ce
monies and to the worship of God according to their belief'; for
is indispensable to their religious faith that they own their proper
in common and live a communal life. As a religious princ
84 pal they have agreed to this and to devote their common la
to their common support."

If the test applied in the Amana Society case is sound, is it no
complete answer to the position of the majority in the instant cas
If the same test does not apply, it seems that the majority shou
have distinguished the instant case from that one. If the test a
plied in the Amana Society case is erroneous, the majority shou
have frankly overruled it.

From what the majority has said, we take it that if the Germa
reading text books instead of telling of Washington, Linco
Patrick Henry, and other men commonly told of in elementary re
ing text books, had told of Joseph, David, Solomon and Christ, and
instead of containing lessons teaching honesty and morality and th
ordinary virtues which are of advantage in material things, had co
tained lessons telling these same truths, in a religious vein, it wo
have been held that the reading books were religious in charac
and constituted a part of the religious instruction. Yet the tea
ing of the German reading in each instance would have been for th
same identical purpose, viz., to enable pupils to acquire a sufficie
reading knowledge in German to enable them intelligently to re
the catechism, Bible and religious literature, and to take part i
telligently in worship in the home and in the church in that la
guage. In all this there seems to be considerable of hair-splitti
and very little of real substance. We merely ask for a reconsid
tion of the religious question involved in this case in the lig
85 of the Amana Society case and of the Trinity Church ca
which are cited in the dissenting opinion of the Chief Justi

III.

How the Constitutionality of the Statute May Be Saved.

Of course if it should be held that the German reading was taught in the instant case as a part of the religious instruction of the school, it would not be necessary to pass upon the constitutionality of the act in this case. However, that would not decide the question as to whether the statute was constitutional where a foreign language was taught under similar circumstances as a secular branch, which question sooner or later necessarily must be squarely met and decided.

While the letter of the language act may inhibit the teaching of a foreign language in the grades as a secular branch, we are of firm opinion that such is not the spirit of the act any more than it is in any other criminal statute where perfectly harmless and innocent acts are made a crime by the literal wording of the statute.

In our original brief we argued this proposition at some length and cited and quoted from cases holding that the intention to make an innocent and harmless act criminal is never to be imputed to any legislature. While such act may be within the letter of the
86 statute, it is never within the spirit of the statute. A penal statute should not be applied to any case which does not fall both within its letter and its spirit.

Authorities sustaining the above rule are uniform. We cite a few:

State v. Gish, 168 Iowa, 70, 78.
State v. Botkin, 71 Iowa, 87-89.
Back v. Back, 148 Iowa, 223, 229.
Trinity Church v. United States, 36 L. Ed. 226, 228, 229.
De Hasque v. Railway Co., 173 Pac. 73.

We have read the majority opinion very carefully and can find nothing therein indicating that the majority finds or believes that either the welfare of the children or the peace, order and welfare of the state is injured in the slightest through a child or any other person, acquiring a reading and speaking knowledge of a foreign language, provided that the same is not acquired at the expense of his English education and his Americanism. The majority has not said, and surely does not believe, that any child or person is the worse off for knowing a foreign language where he also knows the English language, and has, or is acquiring an English education and has been or is being properly taught patriotism and Americanism.

If all compulsory branches are taught in English with English as the medium of instruction, including Americanism and patriotism, which is one of the compulsory branches, in what possible way can it be said that a child would be any better or more patriotic,
87 or have any better command of English, or have any better English education, if, at the same time that he is getting his English education and in the same school and through the same teacher, he studies a foreign language as an additional subject?

The majority opinion contains nothing showing potential harm o wrongfulness under such circumstances. The language act is no aimed at the teacher, at the school, or at the text book. It is ex pected that children now being educated in private schools wil continue to be educated in the same private schools, through th same text books and through the same teachers.

What we have said in discussing the constitutional question re specting the inherent innocence of learning a foreign language i applicable here, and for that reason we do not feel that anything further can be accomplished by continuing the argument.

In our opinion the serious doubt of the constitutionality of th statute, if the exception is not implied, is such as, under well recog nized rules of statutory construction, compels the court to imply th exception, and therefore, to hold that the spirit of the act does no prohibit the teaching of a foreign language as an additional subject Where the constitutionality of a statute is assailed, that rule i followed where possible whenever serious doubt as to constitutionality exists.

Hunter v. Coal Co., 175 Iowa, 245, 268 and 269, and authori ties therein cited.

In Fox v. Washington, 59 L. Ed. 573, on page 575, the Supreme Court said:

88 "It is to be presumed that state laws will be construed * * * by state courts" in such way as to avoid doubtful constitutional question.

Manifestly, the rule well might be followed here and the excep tion implied in favor of the innocent and proper act of teaching a foreign language and thereby save all that there is of good in the language act, viz., the provision that requires all compulsory branches to be taught in English in private schools as well as in public schools. If the legislature is of opinion that anything further is required, it has the undoubted right to enact a law re quiring that teachers of parochial schools be holders of certificate entitling them to teach in the public schools; that before anyone is granted a teacher's certificate, his Americanism and patriotism, as well as his educational qualifications be proved; that the text books used in private schools be subject to approval of state authority; and other remedial acts along such lines as will insure that children attending private schools receive all of the advantages of an English education and of learning to be loyal and patriotic citizens that they could possibly obtain through the public schools.

89 Conclusion.

We believe that a re-examination of this case will disclose that the decision of the majority is wrong and that a rehearing should be granted.

Under the Fourteenth Amendment to the Federal constitution

the legislature may not select any means it chooses to remedy even a manifest evil. Before the means selected will stand the constitutional test, the court must be able to see that they bear the proper relation to the evil, and as a remedy, are appropriate to the end. Rights, privileges and immunities of citizens cannot be left to legislative caprice, or even serious error of judgment. There can be no doubt that this rule obtains when constitutionality is raised under the Fourteenth Amendment. We think the same rule obtains when the attack is under our state constitution.

The statute does not apply to religious subjects or to subjects taught for religious purposes. In this case the holding should be that the foreign language was taught as a part of the religious instruction and for a religious purpose, and that therefore the act with which the defendant is charged is not even within the letter of the statute.

Even if the foreign language was taught purely as a secular branch, nevertheless under the circumstances in the instant case, such teaching was harmless and innocent, and therefore not within the spirit of the language act, although possibly within its letter. Therefore, an exception in favor of the innocent and harmless act of the defendant should be implied in accordance with the rules implying such exceptions where the strict letter of the law
90 makes an innocent act criminal. This rule is especially applicable in this case because of the serious doubt of constitutionality if the statute is not so construed. By implying the exception, all of the provisions of merit in the statute may be saved.

Respectfully submitted,

PICKETT, SWISHER & FARWELL,
F. P. HAGEMANN,
Attorneys for Appellant.

We hereby certify that the actual cost of printing the foregoing petition for rehearing is $—.

PICKETT, SWISHER & FARWELL,
Attorneys for Appellant.

Notice is hereby given that at the submission of the petition for rehearing, appellant will ask to be heard in oral argument.

PICKETT, SWISHER & FARWELL,
Attorneys for Appellant.

91 STATE OF IOWA, *ss:*

Supreme Court of Iowa.

Be it remembered on the 21st day of June, 1921, the following proceedings, among others, were had in the Supreme Court of Iowa, to wit:

THE STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Appeal from Bremer District Court.

This cause is submitted on Appellant's Petition for Rehearing a file and oral argument of counsel.

I hereby certify that the foregoing is a full, true and comple copy of the Record entry of said Court in the above entitled cau as full, true and complete as the same remains on file and of reco in my office.

In Testimony Whereof, I have hereunto set my hand and affix the seal of said Court, at Des Moines, this 26th day of July, A. 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of Supreme Court of Iowa.

92 STATE OF IOWA, *ss:*

Supreme Court of Iowa.

Be it Remembered that on the 25th day of June, 1921, the fo lowing proceedings, among others, were had in the Supreme Cou of Iowa, to wit:

THE STATE OF IOWA, Appellee,

vs.

AUGUST BARTELS, Appellant.

Appeal from Bremer District Court.

Appellant's Petition for Rehearing having been fully considere is overruled.

I hereby certify that the foregoing is a full true, and comple copy of the Record entry of said Court in the above entitled cau as full, true and complete as the same remains on file and of reco in my office.

In Testimony Whereof, I have hereunto set my hand and affix the seal of said Court, at Des Moines, this 26 day of July, A. 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of Supreme Court of Iowa.

93 Filed Jul. 26, 1921. B. W. Garrett, Clerk Supreme Court.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the State of Iowa, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment on a plea which is in said Supreme Court of Iowa, being the highest court of law or equity of said State in which a decision could be had in said suit between the State of Iowa, plaintiff, and August Bartels, defendant, wherein was drawn a question of right or privilege set up and claimed under the Constitution of the United States, and the decision of said court was against the right and privilege as set up and claimed, and wherein was drawn in question the validity of a statute of the State of Iowa and amendments thereto on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of the validity of such statutes and amendments, a manifest error has happened to the great damage of the said August Bartels, as by his complaint appears.

We, being willing that error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the records and proceeding aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C. within thirty (30) days after the date of signing the citation therein, in the 94 said Supreme Court to be then and there held. That the records and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court, the 26th day of July, 1921.

[Seal U. S. District Court, District of Iowa.]

WM. C. MCARTHUR,
Clerk of the District Court of the United States in and for the Southern District of Iowa,
By GERTRUDE DARRELL,
Deputy.

Allowed, July 26th, 1921.
W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

95 Filed Jul- 26, 1921. B. W. Garrett, Clerk Supreme Cou

In the Supreme Court of Iowa.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Assignment of Errors.

Now comes the above named August Bartels, plaintiff in error, the above entitled cause (named as defendant in the State cou and in connection with his petition for writ of error makes this assignment of errors.

The Supreme Court of Iowa erred in holding and deciding th Section 1 of Chapter 198 of the Acts of the 38th General Assem of Iowa (Session Laws of Iowa, 1919) was valid. The validity said Section was denied and drawn in question by the plaintiff error on the ground of its being repugnant to the Constitution of t United States and in contravention thereof.

The said errors are more particularly set forth, as follows:

The Supreme Court of Iowa erred in holding and deciding:

First. That said Section 1 did not abridge the privileges and m munities of citizens of the United States or of this plaintiff in er as guaranteed by the Fourteenth Amendment to the Federal C stitution.

Second. That said Section 1, as applied to this plaintiff in er did not deprive him of liberty and property without due proces law contrary to the provisions of the said Fourteenth Amen

96 ment of the Federal Constitution.

CHARLES E. PICKETT,
Attorney for Plaintiff in Erro
AUGUST BARTELS,
By C. E. PICKETT,
PICKETT, SWISHER & FARWELL AN
F. P. HAGEMANN,
His Attorneys.

The above assignment of errors was presented to me with the p tion for writ of error. The Clerk of the Supreme Court of I was directed to file the same as one of the papers in this proceed to procure a writ of error.

Dated July 26th, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa

97 Filed Jul- 26, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Petition for Writ of Error.

To the Honorable William D. Evans, Chief Justice of the Supreme Court of Iowa:

Plaintiff in error, considering himself aggrieved by the final decision of the Supreme Court of Iowa in rendering judgment against him in the above cause, which in the State court was entitled State of Iowa v. August Bartels, and by the decision in said Supreme Court denying and overruling his petition for a rehearing in said cause, shows, by this petition, that in the records, proceedings, and decision in the said Supreme Court of the State of Iowa, the same being the highest court of said state in which a decision could be had in this case, a manifest error has occurred greatly to the damage of the said August Bartels, plaintiff in error.

That the original judgment was rendered and opinion filed in the Supreme Court of Iowa on February 12, 1921; and the petition for rehearing was filed, presented, argued and submitted in accordance with the statutes, rules and practice in said court, and due notice thereof given, and the final decision upon said petition for rehearing entered on the 25th day of June, A. D. 1921.

That as appears in the records and proceedings in said Supreme Court of Iowa, there was drawn in question whether Section 1 of Chapter 198 of the Acts of the 38th General Assembly of Iowa was repugnant to the Constitution of the United States and in con-

98 travention thereof, and whether the rights, privileges and immunities of the plaintiff in error, as a citizen of the United States, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, were abridged by said statute, and whether he was thereby denied and deprived of his liberty and property without due process of law; all of which fully appears in the records and proceedings of the case, and is specifically set forth in the assignment of errors filed herewith.

Wherefore, plaintiff in error prays that writ of error be allowed therefrom to the Supreme Court of the United States; that a transcript of records, proceedings and papers upon which said judgment was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington D. C., under the rules of such court in such cases made and provided, and that the same may be by said Honorable Court inspected and corrected in accordance with law and justice, and that an order fixing the amount of a super-

sedeas bond be made, and also for such other orders and proces as it may be necessary to secure a review of said judgment in th Supreme Court of the United States.

AUGUST BARTELS,
By PICKETT, SWISHER, FARWELL,
F. P. HAGEMANN,
His Attorneys.

CHARLES E. PICKETT,
Atty. for Plaintiff in Error.

Upon consideration, the within petition is granted, and it is o dered that a writ of error, as prayed, be, and the same is, hereby a lowed, which shall issue upon the petitioner giving bond with a propriate conditions, as by law provided, in the sum of $1,00 which said bond shall operate when approved as a supersedeas.

Dated July 26th, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

99 Filed July 26, 1921. B. W. Garrett, Clerk Supreme Cour

In the Supreme Court of Iowa.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Bond for Costs and to Stay Execution.

Know all men by these presents:

That I, August Bartels, as principal, and A. C. Grossman and C Hoppenworth, as sureties, are held and firmly bound unto the St of Iowa in the sum of One Thousand Dollars ($1,000.00) for th payment of which well and truly to be made we bind ourselves joint and severally:

Whereas, the above named plaintiff in error seeks to prosecute h writ of error in the Supreme Court of the United States to reve the judgment rendered in the above written action by the Supre Court of the State of Iowa, which cause in the State court was e titled State of Iowa v. August Bartels:

Now, therefore, the condition of this obligation is such that if t above named plaintiff in error shall prosecute his said writ of error effect and shall answer all costs that have been or may be adjud against him, and if the said August Bartels shall satisfy and perfo the judgment of the court now or hereafter in said cause rende

against him in case he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and effect.

Dated this 26 day of July, A. D. 1921.

AUGUST BARTELS,
Principal.
A. C. GROSSMAN,
CARL HOPPENWORTH,
Sureties.

100 THE STATE OF IOWA,
Bremer County, ss:

A. C. Grossman and Carl Hoppenworth, sureties named in the above bond, being duly sworn, each says:

That he is a resident of the County of Bremer, Iowa; that he is a freeholder and is worth double the sum secured by said bond beyond the amount of his debts and has property liable to execution in this state equal to the sum covered by this bond.

A. C. GROSSMAN.
CARL HOPPENWORTH.

Subscribed and sworn to before me this 26 day of July, A. D. 1921.

[SEAL.] F. P. HAGEMANN,
Notary Public in and for Bremer County, Ia.

STATE OF IOWA,
Bremer County, ss:

I, I. E. Smith, Clerk of the District Court of Iowa in and for Bremer County, hereby certify that I am personally acquainted with the sureties on the within bond and with their responsibility, and that if said bond were presented to me for approval, as such Clerk, I would approve and accept the same.

Witness my hand and the seal of court affixed this 26 day of July, A. D. 1921.

[SEAL.] I. E. SMITH,
Clerk of the District Court of Iowa
in and for Bremer County,
By F. W. SMITH,
Deputy.

The within bond and sureties thereon are this day approved and said bond ordered hereby to operate as a supersedeas.

Dated July 26, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

101 Supreme Court of the United States.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Prayer for Reversal.

To the Honorable Supreme Court of the United States:

Now comes August Bartels, plaintiff in error, and prays for a w of error from the judgment of the Supreme Court of the State Iowa in a criminal action brought by the State of Iowa against A gust Bartels in the District Court of Bremer County, Iowa, on t 7th day of January, 1920, which judgment was, on appeal, affirm by the Supreme Court of Iowa, and judgment therein rende against plaintiff in error for costs, the opinion being adhered to petition for rehearing, which petition was overruled on the 25th d of June, 1921, the said judgment and order on petition for rehear being each rendered and properly entered of record by the said S preme Court of Iowa, and plaintiff in error, having theretofore the 26th day of July, 1921, filed its assignment of errors with t Chief Justice of the Supreme Court of Iowa, and duly lodged t same with the Clerk of said court. The plaintiff in error also pr that the said judgment and order of the Supreme Court of Io dated the 12th day of February, 1921, be reversed, and that a ju ment be rendered in his favor against the defendant for costs, a the cause remanded to the Supreme Court of Iowa for proper p ceedings in the premises.

AUGUST BARTELS,
By C. E. PICKETT,
PICKETT, SWISHER & FARWELL, AN
F. P. HAGEMANN.

CHARLES E. PICKETT,
Attorney for Plaintiff in Error.

STATE OF IOWA, *ss:*

Supreme Court.

Let a writ of error issue upon the execution of a bond by Aug Bartels in the sum of $1,000.00, conditioned as required by law, s bond, when approved, to act as a supersedeas.

Dated at Chambers, Des Moines, Iowa, July 26th, A. D. 192

W. D. EVANS,
Chief Justice of the Supreme Court of Iow

102 Filed Jul. 26, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa.

AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Citation.

NITED STATES OF AMERICA, *ss:*

he President of the United States to the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at and be-ore the Supreme Court of the United States at Washington, D. C. ithin thirty (30) days from the date hereof, pursuant to a writ of rror filed in the office of the Clerk of the Supreme Court of Iowa, herein August Bartels is plaintiff in error and you are defendant n error, to show cause, if any there be, why the judgment rendered gainst the said plaintiff in error, as in said writ of error mentioned, hould not be corrected, and why speedy justice should not be done he parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of owa this 26th day of July, A. D. 1921.

[Seal of the Supreme Court of Iowa.]

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

Attest:

B. W. GARRETT,
Clerk of Supreme Court of Iowa.

Des Moines, Iowa, July 26th, 1921.

I, Ben J. Gibson, Attorney General of Iowa, and attorney of rec-d for the State of Iowa, defendant in error in the above entitled use, hereby accept and acknowledge due and legal service of the ove citation and enter an appearance in the Supreme Court of the nited States.

BEN J. GIBSON,
Attorney General of Iowa.

103 *Certificate of Lodgment.*

STATE OF IOWA, *ss:*

Supreme Court.

I, B. W. Garrett, Clerk of the above named court, do hereby certify there was lodged with me as such Clerk on July 26th, A. D. 1921, in the cause entitled August Bartels, plaintiff in error, v. The State of Iowa, Defendant in error, (said cause in the Supreme Court of Iowa being entitled State of Iowa, Appellee, v. August Bartels, Appellant):

1. The original bond on Writ of Error, of which copies are herein set forth.

2. The original and two copies of the Writ of Error, as herein set forth, one for the Defendant in Error and one filed in my office.

3. The original and two copies of the Assignment of Errors.

4. Original and two copies of the Petition for Writ of Error.

5. The original and two copies of the Prayer for Reversal.

6. The original and two copies of the Citation with the acceptance of service thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court in my office at Des Moines, Iowa, this 26th day of July, A. D. 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of Supreme Court of Iowa.

104 *Certificate.*

STATE OF IOWA, *ss:*

Supreme Court.

I, B. W. Garrett, Clerk of the above named court, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings in the cause numbered in said court 33509, State of Iowa, Appellee, v. August Bartels, Appellant, and also the opinion of the court rendered therein (also the dissenting opinion) as the same now appears of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Des Moines, Iowa, this 26th day of July, A. D., 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.

105 AUGUST BARTELS, Plaintiff in Error,

vs.

THE STATE OF IOWA, Defendant in Error.

Return to Writ of Error.

UNITED STATES OF AMERICA,
Supreme Court of Iowa, ss:

In obedience to the within Writ of Error, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of Iowa in the city of Des Moines, this 26th day of July, A. D., 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.

Costs of transcript, $—, paid by August Bartels.

Endorsed on cover: File No. 28,400. Iowa Supreme Court. Term No. 445. August Bartels, plaintiff in error, vs. The State of Iowa. Filed August 1st, 1921. File No. 28,400.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 134.

AUGUST BARTELS, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF OF AUGUST BARTELS, PLAINTIFF IN ERROR

CHARLES E. PICKETT,
Attorney for August Bartels, Plaintiff in Error.

FRANK E. FARWELL,
BENJAMIN F. SWISHER,
FRED B. HAGEMANN,
Of Counsel.

(28,400)

SUBJECT INDEX.

TABLE OF CASES.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 134.

AUGUST BARTELS, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF OF AUGUST BARTELS, PLAINTIFF IN ERROR

Statement of the Case.

The plaintiff in error was convicted in the State court of a violation of chapter 198 of the Acts of the 38th General Assembly of Iowa, which purports to prohibit the use of any language other than English in teaching secular subjects in the public or private schools of the State of Iowa.

From such conviction and sentence thereon the plaintiff in error appealed to the Supreme Court of Iowa, which court affirmed the conviction by a divided court, four to three, on February 12, 1921. (See opinion and dissenting opinion, pages 12-29 of the printed Transcript of Record. Opinion is also found in 191 Iowa, 1060.)

Plaintiff in error (defendant below) filed his petition for rehearing in the Iowa Supreme Court, which was overruled on June 25, 1921 (printed Record, page 52). The petition and argument in support thereof is reprinted in the Transcript, pages 31-51.

The plaintiff in error brings the case to this court upon a writ of error, which was allowed by the chief justice of the Supreme Court of Iowa on July 26, 1921 (Record, 53-60).

Among other questions involved in the Iowa courts was whether the statute which plaintiff in error was convicted of violating is void under the Fourteenth Amendment to the Constitution of the United States. The sole question involved in this court is the said constitutional question.

Iowa Language Act.

The said statute is chapter 198 of the Acts of the 38th General Assembly of Iowa (Session Laws, 1919) and reads as follows:

> *An Act Requiring the Use of the English Language as the Medium of Instruction in All Secular Subjects in All Schools Within the State of Iowa.*
>
> *Be it enacted by the General Assembly of the State of Iowa:*
>
> SECTION 1. That the medium of instruction in all secular subjects taught in all of the schools, public

and private, within the State of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited, provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade.

SECTION 2. That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

Approved April 10, A. D. 1919.

The charge against the plaintiff in error was made by information, the charging part of which is as follows:

Information.

The defendant (plaintiff in error) is accused of the crime of using a language other than English as the medium of instruction in a secular subject in a private school in Iowa taught to scholars below the eighth grade.

For that the defendant (plaintiff in error) about the tenth day of November, 1919, at the township of Maxfield, in the county and State aforesaid, did use a language other than English, to wit, the German language, as a medium of instruction in the teaching of a secular subject, to wit, reading, to Selman Steege, Cordelia Griese and Lawrence Phipo, the said persons then and there being scholars in a private school in the aforesaid township, county and State, and receiving said instruction below the eighth grade in said school from said defendant, who was then and there

> a teacher in said school, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Iowa.

The original trial was in justice court and resulted in the conviction of the plaintiff in error and a fine of $25.00 and costs (Record, 3). Plaintiff in error appealed to the District Court of Bremer County, Iowa, where the case was tried *de novo* and resulted in conviction and a fine of $25.00 and costs (Record, 10). This is the judgment that was affirmed by the Iowa Supreme Court.

The Facts.

The facts upon which the case was tried were stipulated and agreed to by the parties (Printed Record, 4 to 8). Said stipulation of facts is as follows:

> "It is stipulated between the State of Iowa and August Bartels, defendant, that the following is a true and correct statement of the facts involved in the case, and that the case shall be tried and determined upon said facts without the introduction of any other testimony therein, said facts being as follows, to wit:
>
> First. That St. John's Evangelical Lutheran Church is a rural church located in Maxfield township, Bremer county, Iowa; that the church corporation owns and uses a church edifice and parochial school building and other property in connection therewith of the reasonable value of approximately $40,000.00, and at the present time has a congregation of approximately three hundred with two hundred communicants; that it is a religious organization affiliated with the Evangelical Lutheran Synod

of Iowa and other States, and that the said church and its parochial school have been continuously supported and maintained by the members for religious purposes in accordance with the beliefs and practices of the said Evangelical Lutheran Synod of Iowa and other States. That among the beliefs and practices of the said church and the Synod with which it is affiliated is the belief and practice of having the children of the members and communicants attend its parochial school until after their confirmation and acceptance into the church as communicants thereof, and that the object and purpose of the parochial school is to give the said children of the members and communicants a Christian education in the catechism, beliefs and practices of the said church at the same time that they are receiving their secular education in the common branches, and to conduct daily in said school devotional exercises in accordance with said beliefs and practices.

Second. That the children attending said school are the children of the communicants and members of the aforesaid church, and that the present school attendance is, and for some years has been, approximately thirty-six pupils, of the ages between six and thirteen years, both inclusive; that the said parochial school is in session thirty-six weeks of five days each, with school hours from nine o'clock a. m. to twelve noon, and from one o'clock p. m. to four o'clock p. m. each school day, beginning about the middle of September and ending about the middle of the following June, with the ordinary holiday vacations; that ordinarily the children of the school are confirmed and received into the church on attaining the age of thirteen years, at which time said pupils are expected to, and as a rule have completed the seventh grade in the common-school branches mentioned in paragraph

three hereof, and that as a rule the pupils of the school, after completing the seventh grade and being confirmed, attend the public schools in the same community, entering the eighth grade of the said public schools; that the school year in the parochial school is a month or more longer than is the school year in the public schools of the same community.

Third. That the secular branches taught in said parochial school, to wit, the common-school branches of reading, writing, spelling, arithmetic, grammar, geography, American citizenship, physiology and United States history, are taught and, for a number of years, have been taught in the English language with English as the medium of instruction; and that the text books used in said subjects are the same text books used in the public schools in said community, and that the instruction given in the aforesaid common branches is equivalent and, in all respects, is substantially the same as the instruction given in the said common branches in the public schools in said community.

Fourth. That the defendant, August Bartels, is the duly appointed, employed and acting teacher of the aforesaid parochial school, and has been the teacher of said parochial school continuously during the last five years; that said defendant is a competent teacher possessing the necessary qualifications and moral character for that purpose.

Fifth. That the members and communicants of the aforesaid church and the children attending the aforesaid parochial school are of foreign extraction; that all of said members and communicants, whether immigrants, or born in this country, and this defendant and the children attending the parochial school, are citizens of the State of Iowa and of the United States,

either by reason of their birth in this country, or by reason of their naturalization or the naturalization of their parents, as, and in the manner, provided by law.

Sixth. That the members and communicants of said church have always been accustomed to worship in the church and have devotional exercises in the home in the German language and that the devotional exercises and religious instruction of the children in said parochial school for many years was exclusively in the German. During recent years religious instruction in the said parochial school has been and is now given in both the English and German languages. This instruction has been given in this way in order that the children might be able to participate intelligently with their parents in religious worship in the home and in the church. It is done also for the purpose of enabling the parents to supplement the religious instruction of the school by instruction in religion and morals in the home. It is the desire of the parents of the children who are in attendance at said school that their children be given instruction in religious matters in the German language and that the children acquire a sufficient knowledge of the German language to enable them to read intelligently the church catechism and the Bible in the German.

Seventh. That a part of the communicants and members of the aforesaid church have insufficient knowledge of the English language to freely and clearly receive or impart instruction in the matter of religion and morals, or to take part with the same freedom and the same understanding in religious or devotional exercises conducted in the English language that they would in the German; that among the duties enjoined by said church and which are the beliefs and practice of the communicants of said church whose

children are now attending the aforesaid parochial school, are the duties of assembling with the members of their families and attending at stated periods devotional services conducted in the home and of attending with their children religious services conducted in said church, consisting of sermons, instruction in matters of faith and religion, the singing of hymns and other religious and devotional exercises usual in Protestant Christian churches. That knowledge of the catechism is essential to confirmation in the church and that it is the belief of the members and communicants of said church, whose children are now attending the aforesaid parochial school, that the training of their children in religion and in Christian citizenship will be materially and irreparably interfered with unless the said children learn to read the language used by the parents in worship in the church and the home. That it is the belief of the said church and the members and communicants thereof, that children should be prepared for confirmation at about the time they complete the seventh grade in the secular branches, or when they have attained the age of thirteen years. It is also the belief of the members and the communicants of the said church that parents will not be able to perform their full Christian duty toward their children in accordance with the beliefs and practices of the church if they are unable to supplement the religious training of their children through admonitions and worship at the home conducted by the parents in the German language in which they are accustomed to worship.

Eighth. That on November 10, 1919, and upon each school day during the present school year beginning about the middle of September, 1919, up to the time of the filing of the information in this case, the

defendant, August Bartels, in addition to teaching through the medium of the English language the common-school branches mentioned in paragraph three hereof (including among said common-school branches English reading by the use of English text books) did teach in said parochial school reading in the German language to the pupils of said school, to wit, Selma Steege, Cordelia Griese and Lawrence Phipo, and to the other pupils in said school whose names are not herein set out. That the said pupils to whom reading was taught in the German language were of the ages between six and thirteen years, inclusive, and were below the eighth grade. That the text books used in teaching reading in the German language to said pupils were printed in the German language and contained such reading lessons as ordinarily appear in elementary reading text books printed in the English language and used in the public schools of the State, and are hereby admitted to be of a secular character rather than of a religious character. German was used as the medium of instruction by the defendant in teaching reading of the German language. That said German reading was taught at the request and with the full consent of the parents of said children and for the purpose of teaching the said children to read the German language sufficiently to enable them intelligently to read the catechism and Bible in that language and to understand religious instruction when given in said language and to take part in religious services conducted in said language in the church and Sunday School and in the home.

The opinion of the Supreme Court of Iowa appearing in the Printed Record on pages 12-29 (191 Iowa, 1060) as well as the specification of errors in the petition for rehearing filed in the State Supreme Court

(beginning page 32 of the Printed Record) and the motion for dismissal of the case filed in the trial court (pages 8 and 9 of Printed Record) show that the question of constitutionality of the language act under the 14th Amendment to the Federal Constitution was raised in the trial and supreme courts and passed upon by said courts, and the validity of the act upheld.

The Iowa language act and the Iowa compulsory education laws, for convenience of reference, are copied in full in the first division of "Points and Authorities," following the "Specification of Errors."

Specification of Errors.

(1) The Supreme Court of Iowa erred in holding and deciding that section 1, chapter 198, of the Acts of the 38th General Assembly of Iowa (Session Laws, 1919) was valid. The said section is as follows:

> SECTION 1. That the medium of instruction in all secular subjects taught in all of the schools, public and private, within the State of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; *provided, however,* that nothing herein shall prohibit the teaching and studying of foreign language as such as a part of the regular school course in any such school, in all courses above the eighth grade.

The validity of said section was denied and drawn in question in the said Supreme Court of Iowa and in the trial court by the plaintiff in error on the ground of its being repugnant to the Constitution of the United States, and particularly in that it was in contravention of the 14th Amendment to the said Constitution.

(2) The Supreme Court of Iowa erred in holding and deciding that the section 1 of said chapter 198, Acts 38th General Assembly, quoted above, did not abridge the privileges and immunities of citizens of the United States or of the plaintiff in error as guaranteed by the 14th Amendment to the Federal Constitution.

(3) The Supreme Court of Iowa erred in holding and deciding that said section 1, quoted above, as applied to the plaintiff in error in this case, did not deprive him of liberty and property without due process of law contrary to the provisions of the said 14th Amendment to the Federal Constitution.

(The assignment of errors upon which the writ of error was issued appears on page 54 of the record.)

Points and Authorities.

I.

For convenience we copy the Iowa language act and compulsory education laws.

Language Act.

> SECTION 1. That the medium of instruction in all secular subjects taught in all of the schools, public and private, within the State of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; *provided, however,* that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade.

SECTION 2. That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

Chap. 198, Acts 38 General Assembly (Session Laws of Iowa, 1919).

Compulsory Education Law.

Iowa Code Supplement 1913.—SECTION 2823-a. Any person having control of any child of the age of seven to sixteen years inclusive, in proper physical and mental condition to attend school, shall cause such child to attend some public, private, or parochial school, where the common school branches of reading, writing, speeling, arithmetic, grammar, geography, physiology, and United States history are taught, or to attend upon equivalent instruction by a competent teacher elsewhere than school. for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date which date shall not be later than the first Monday in December; but the board of school directors in any city of the first or second class may require attendance for the entire time the schools are in session in any school year. *Provided* that this section shall not apply to any child who lives more than two miles from any school by the nearest traveled road except in those districts in which the pupils are transported at public expense, or who is over the age of fourteen and is regularly employed; or has educational qualifications equal to those of pupils who have completed the eighth grade; or who is excused for sufficient

reasons by any court of record or judge thereof; or while attending religious service or receiving religious instructions. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than three dollars nor more than twenty dollars, for each offense.

Teaching American Citizenship Required.

SECTION 1. All public and private schools located within the State of Iowa shall be required to teach the subject of American citizenship.

Chap. 406, Acts 38 General Assembly (Session Laws of Iowa, 1919).

Statute Requiring Instruction in Public Schools to be Given in English.

Iowa Code, 1897.—SECTION 2749. The voters assembled at the annual meeting shall have power:

* * * * * * *

(3) To determine upon added branches that shall be taught, but instruction in all branches except foreign languages shall be in English.

II.

Rights of Parents and Private Schools.

1. It is a fundamental right of parents to bestow upon their children a full measure of education in addition to the compulsory education required by the State, provided that

the additional branches do not interfere with public welfare or health.

Columbia Trust Co. *v.* Lincoln Institute, 29 L. R. A. (N. S.), 53 Ky.

Berea College *v.* Kentucky, 211 U. S., 45; 53 L. Ed., 81, especially dissenting opinion.

Meyer *v.* State, 187 N. W., 100 (Neb.), dissenting opinion.

2. There is a well-recognized distinction between the power of the State over its public schools and its power over private schools. Laws governing instruction in private schools can be upheld only where the public welfare, safety, health, or morals are involved, with the further limitation that the regulation must be reasonable and necessary to accomplish the end sought.

24 Ruling Case Law, page 562, section 5, and authorities, *supra.*

III.

Police Power.

1. The Iowa language act as construed by the Supreme Court of Iowa cannot be upheld under the police power in that the right of the plaintiff in error to teach German to his pupils, under the circumstances shown in this case, is a substantial right of property and beyond question part of his liberty as guaranteed against hostile State action by the 14th Amendment to the Constitution of the United States.

24 Ruling Case Law, page 562, section 5.

Berea College *v.* Commonwealth, 211 U. S., 45, 67; 53 L. Ed., 81, 90.

Meyer *v.* State, 187 N. W., 100; dissenting opinion, 104.

2. The mischief the language act was intended to remedy is ignorance of English and not knowledge of a foreign language. The remedy, in so far as it prohibits the teaching of a foreign language in the elementary private schools, is not within the police power for the reason that the same is not "reasonably necessary for the accomplishment of the purpose."

Lawton *v.* Steele, 152 U. S., 133; 38 L. Ed., 385, 388.

12 *Corpus Juris,* 929, section 441.

Columbia Trust Co. *v.* Lincoln Institute, 29 L. R. A. (N. S.), 53 Ky.

Buchanan *v.* Warley, 245 U. S., 60, 81; 62 L. Ed., 149, 163.

Lochner *v.* New York, 198 U. S., 45, 56; 49 L. Ed., 937, 941.

Traux *v.* Raich, 239 U. S., 33, 41; 60 L. Ed., 131, 135.

Yee Gee *v.* City, 235 Federal, 757, 763, and 764.

People *v.* Steele, 83 N. E., 236 (Ill.); 14 L. R. A. (N. S.), 361, 365.

People *v.* Weiner, L. R. A., 1916 C, pages 775, 778 (Ill.).

3. Not only does the Iowa language act infringe upon the civil rights and privileges of our citizens, but it infringes upon their religious liberties.

Church of the Holy Trinity *v.* United States, 143 U. S., 457; 36 L. Ed., 226.

State *v.* Amana Society, 132 Iowa, 304.

Columbia Trust Co. *v.* Lincoln Institute, 29 L. R. A. (N. S.), 53 Ky.

Dissenting Opinion Instant Case, 191 Iowa, 1074.

IV.

Classification.

The classification in the language act is without reasonable basis, in that the inhibition applies only to schools below certain grades, whereas foreign languages may be freely taught the same children by parents, tutors, or others in any place and under any circumstances other than in the school. Moreover, there is no attempt to control the character of teacher, text-book, or school; the inhibition applies only to foreign languages.

Neb. Dist. E. L. S., 175 N. W., 531, 535.

Adams *v.* Tanner, 244 U. S., 590, 596; 61 L. Ed., 1336, 1343.

Opinion of the Justices, 34 L. R. A. (N. S.), 604 (Mass.).

G., C. & S. F. R. Co. *v.* Ellis, 165 U. S., 150, 165.

BRIEF AND ARGUMENT.

Can language act be sustained under the police power?

The Iowa Supreme Court by a majority of the judges has held that the statute which the plaintiff in error is convicted of violating is constitutional because the acts therein prohibited are within the police power of the State.

The material portion of the statute (chap. 198, Acts 38th General Assembly, Session Laws of Iowa, 1919) reads:

> "That the medium of instruction in all secular subjects taught in all of the schools public and private, within the State of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; *provided, however,* that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade."

Iowa has compulsory education law. The compulsory branches are reading, writing, spelling, arithmetic, grammar, geography, physiology, United States history, and American citizenship.

Iowa Code Supplement, 1913, section 2823-*a*

Chapter 406, Acts 38th General Assembly, section 1.

The language act and statutes here cited are printed at beginning of "Points and Authorities."

The plaintiff in error and his pupils are citizens of this country (Record, top page 6).

All of the said compulsory branches were taught by the plaintiff in error to his pupils by means of the same English text-books used in the public schools of that community, with English as the exclusive medium of instruction. The standard of excellence maintained by the school of the plaintiff in error in the compulsory branches was equivalent in all respects, and substantially the same as in the public schools of that community. This is admitted by paragraph numbered third of the stipulation of facts. The German reading, the teaching of which the Iowa Supreme Court held is prohibited by the language act, was taught as an additional subject, and the teaching thereof, under the admitted facts, did not interfere with the English education of the pupils in the compulsory branches.

We are an English-speaking nation. There is no room for contention that the welfare of the children and of the State and nation does not require that Americans should have an English education. We contend, however, that the welfare of neither is involved in our children and citizens acquiring knowledge of one or more foreign languages in addition to their English education. The utility, as well as the culture effect, of a knowledge of more than one language is too thoroughly recognized to require argument in its support. There is nothing inherently wrong in a child or an adult acquiring knowledge of a foreign language. Such knowledge is not poisonous *per se*—it is not un-American *per se*. On the other hand, the knowledge of one or more foreign languages has always been regarded as part of a liberal education, useful to the individual, to society, and to the State and nation. Certainly no modern language, such as German, French, Spanish, or Italian, can be co[illegible]emned

as useless, or a knowledge thereof as harmful to an individual, old or young, or to the State or nation.

If the right to study and acquire knowledge of a foreign language is not a fundamental right of citizenship, and the right of a teacher to teach a foreign language to other citizens is not a fundamental right of property and liberty guaranteed by the 14th Amendment to the Federal Constitution, it would seem that a better reason for denying the right should be found to exist than has been stated by the Supreme Court of Iowa. True the constitutionality of similar statutes have been upheld by the courts of last resort of Nebraska and Ohio.

Meyer *v.* State, 187 N. W., 100 (Neb.).
Pohl *v.* State, 132 N. E., 20 (Ohio).

There is a strong dissenting opinion on the constitutional question in the Nebraska case, the reasoning of which we believe to be unanswerable.

There is quite a uniformity regarding the circumstances, which the three State supreme courts find justify the various language statutes under the police power.

In the instant case the Iowa court said:

> "The advent of the great world war revealed a situation which must have appealed very strongly to the Legislature as justifying the enactment of this statute. Men called to the colors were found to be, in some instances, not sufficiently familiar with the English language to understand military commands or to read military orders. It was to meet this situation, to encourage the more complete assimilation of all foreigners into our American life, to expedite the full Americanization of all our citizens, that the Legislature deemed this statute for the best interests of the State. * * *"

Further, the Iowa Supreme Court by the majority said:

> "With the wisdom of the act of the Legislature in passing the statute in question as a means of meeting this situation and seeking to remedy the same, we have no concern whatever. That question was wholly for the determination of the General Assembly."

Pursuing the same thought, the majority of the court further said:

> "There is, as we view it, no inherent right, no 'privilege,' to teach German to children of tender years that cannot lawfully be denied by the Legislature when, in its judgment and discretion, the exercise of such right under existing conditions is inimical to the best interests of the State."

In the three excerpts printed above is found the gist of the decision. The evil to be remedied consisted in citizens and men called to the colors being ignorant of the English language. The remedy applied by the Legislature is denial of the right to teach foreign languages to children under the ninth grade. This remedy the Iowa Supreme Court holds is a matter "wholly for the determination" of the Legislature.

In Lawton *vs.* Steele, 152 U. S., 133; 38 L. Ed., 385, page 389, this court, speaking through Mr. Justice Brown, said:

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals

> The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

The Iowa statute, as construed by the Supreme Court of this State, proceeds upon the theory that if the children of the State are prohibited from learning foreign languages in the schools, public and private, until after they have passed the eighth grade they will know English and will acquire an elementary English education. Knowledge of English is the ultimate end sought. Are the means prescribed in the statute "reasonably necessary for the accomplishment of the purpose?" One of the tests laid down by this honorable court in the Lawton case, *supra,* is "that the means are reasonably necessary for the accomplishment of the purpose." Many other authorities to this same effect will be cited in the course of argument. One does not learn English by refraining from learning German any more than he learns geography by refraining from learning arithmetic. The evil or mischief to be remedied is ignorance of English. The plain and only remedy would seem to be the study and use of English. The State should have, and manifestly does have, under its police power, the right to require the children of the State to acquire an elementary education in the English language. To that end the State may and had prescribed certain compulsory common-school branches to be taught. All these were by means of English text-books, through the exclusive medium of the English

language, and the results showed a standard of excellence equivalent to that of the public schools. Assuming two pupils of equal capacity, one educated in the public schools of the community, the other in the school taught by the plaintiff in error, the result would be that each would have identically the same English education, but the pupil educated in the school of the plaintiff in error, in addition thereto, would have acquired some reading knowledge of the German language. In what possible way is the State concerned in this further than it is interested in children making the most of their time in school? Manifestly that child has accomplished most who, in addition to acquiring the education offered in the public school, has acquired knowledge of an additional subject, and this is true even though that subject is a foreign language. We reiterate that all the State courts which have passed upon these foreign-language statutes have found the mischief or evil to consist in the ignorance of certain citizens of the English language, and not in the knowledge of a foreign language.

We contend that the State legislatures, doubtless as a result of crowd psychology engendered by the passions of the World War, have mistaken the remedy which is within the police power. Branches of study that are *per se* wrongful or harmful may be prohibited; but where the subject is proper and useful the act that may be prohibited is not the teaching of such proper and useful subject, but the omission to teach and give sufficient time to the English branches. In other words, a State cannot make it a crime to teach manual training, but it can make it a crime to fail to teach arithmetic; the State cannot make it a crime to teach domestic science, but it can make it a crime to fail to teach United

States history; and the State cannot make it a crime to teach a foreign language, but it can make it a crime to fail to teach the English language and reading in the English language.

The power of the State to require that pupils of private or parochial schools shall be given all the advantages of acquiring an education in English and all the advantages of learning Americanism and love of country that the public schools give is undoubted; but that private or parochial school which gives such advantages to its pupils and maintains the standard manifestly cannot be denied the right to teach additional subjects in no way harmful to the pupils, but, on the other hand, useful and proper.

We have no doubt of the State's right to make the common-school branches compulsory and to require that they be taught in English. The State's power likewise is sufficient to require that the teachers of private and parochial schools be qualified, and that they hold teachers' certificates which would entitle them to teach in the public schools. In fewer words, the State may require, as a condition of permitting children to attend a private or parochial school, that the school meets, as to teachers and branches taught and character of instruction, a standard equal to that of the public schools. But can the State go further and deny to the private school the right to teach additional subjects entirely proper and useful and suitable to the capacity of the pupils? Language study is particularly appropriate. Experience has shown that it should be commenced in the primary grades if it is expected that the pupil is to become proficient. Thousands upon thousands of college graduates will testify that, while they studied foreign languages for several years in

college and perhaps in high school, they began the study too late in life to acquire a speaking knowledge of the language. Manifestly no Legislature can constitutionally deny to children the right to learn to speak and read a foreign language at such age as will enable them easily and naturally to become proficient in the use of the language.

Chief Justice Evans, Justices Weaver and Preston concurring, wrote a strong dissenting opinion in the State court, in which it is contended that the German reading was taught by the plaintiff in error as a part of the religious instruction of the school, and that therefore, it was not prohibited by the Iowa statute. It seems to us that there is nothing to add to the argument of Chief Justice Evans upon the question of whether, under the circumstances of the case, the language was taught as a part of the religious instruction. If your honors hold, with the dissenting judges, that it was a part of the religious instruction, the question then arises whether the Fourteenth Amendment to the Federal Constitution inhibits the States from interfering with the religious freedom of citizens.

Whether the branch taught was a secular subject, as held by the majority of the Iowa Supreme Court, or a religious subject, as held by the dissenting judges, does not appear to be very material. Under the Constitution, one's civil liberty and rights are as sacred as are his religious liberties. In either case we are dealing with fundamental rights. The religious question, perhaps, serves to emphasize the fundamental character of the rights involved.

In passing upon the constitutional question involved before this court, the majority of the Supreme Court of Iowa, speaking through Mr. Justice Faville, said:

"Again, it is argued that the act in question is unconstitutional because it violates the Fourteenth Amendment to the Federal Constitution. This amendment has been the subject of such frequent discussion by our courts, Federal and State, that the decisions are like the sands of the sea for number.

"Is any right vouchsafed to the appellant by this amendment violated by this statute? There is, as we view it, no inherent right, no 'privilege' to teach German to children of tender years that cannot lawfully be denied by the Legislature when, in its judgment and discretion, the exercise of such right under existing conditions is inimical to the best interests of the State.

"This constitutional protection is enjoyed always subject to the police power of the State to regulate professions, trades, and occupations in the interest of the public welfare. The statutes regulating the practice of medicine, dentistry, and law are familiar examples of such lawful exercise of the power of the State regarding professions. See Reetz *v.* Michigan, 188 U. S., 505; State *v.* Bair, 112 Iowa, 466; Gundling *v.* Chicago, 177 U. S., 183; Hunter *v.* Coal Co., *supra;* 12 *Corpus Juris,* 1121.

"As we have observed, a known evil existed; it was within the power of the Legislature to seek to remedy it by the enactment of this statute. The defendant has a right to engage in the profession of teaching, but in so doing he is subject to such legislative enactments as may be fairly and reasonably said to be for the public welfare. We think this statute was a proper and reasonable exercise of the police power of the State in attempting to prevent an existing evil which the Legislature regarded as inimical to the public welfare. Such being the case, the defendant has not been denied any privileges guaranteed him by the Constitution."

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We believe that the Supreme Court of Iowa is wrong. The judgment of the Iowa Legislature that the teaching of German to children is inimical to the best interests of the State has no support in fact or reason. The mischief did not consist in children knowing German; the mischief consisted in children and citizens not knowing English—an essentially different thing. The plain remedy is to require that children and citizens acquire knowledge of English and an English education. This, too, is an essentially different thing from prohibiting them from acquiring a reading and speaking knowledge of a foreign language.

Given the opportunity, the children may not only acquire knowledge of English and an English education, but at the same time knowledge of a foreign language.

In Berea College *v.* Commonwealth of Kentucky, 211 U.S., 45; 53 L. Ed., 81, a statute of Kentucky prohibited the teaching of white and colored pupils at the same time in any public or private school of the State, regardless of whether the school was operated by individuals, associations, or corporations.

The plaintiff corporation was indicted and convicted, it being alleged and proved that it had violated the statute by teaching white and colored children in its college at the same time. The Supreme Court of Kentucky sustained the conviction on two grounds, (1) that the right to teach white and negro children in a private school at the same time was not a property right, and (2) that, as plaintiff was a corporation, the conviction should be upheld because plaintiff could exercise only such corporate powers as the State conferred upon it, and that the right to thus teach white and colored children at the same time had not been conferred upon it by law.

This court affirmed the case on the ground that a corporation had no natural right to teach, and that its powers in that respect might be limited by statute. The court further held that whether an individual could thus be prohibited from teaching white and colored children at the same time was not involved, in that the provision of law prohibiting corporations might be held valid although the provisions prohibiting individuals might be unconstitutional.

Mr. Justice Harlan, Mr. Justice Day concurring, dissented on the ground that the statute was not susceptible of being divided into constitutional and unconstitutional parts, and that it must stand or fall as a whole. Therefore they considered the case as though an individual was involved instead of a corporation. The dissenting opinion is so strongly in point with the instant case that we quote from it. We do this the more readily in that apparently had an individual teacher been involved instead of a corporation the court, as a whole, would have concurred in the parts of the dissenting opinion which we quote. (See Buchanan *v.* Warley, 211 U. S., 45, where, on page 79, this court said that the college case was affirmed "solely upon the reserved authority of the Legislature of Kentucky to alter, amend, or repeal charters of its own corporations.")

Beginning page 67 of the Berea College case (L. Ed., page 90), the dissenting justices said:

> "The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by government—certainly not, unless such instruction is, in its nature, harmful to the public morals or imperils the public safety. The right to impart instruction,

harmless in itself or beneficial to those who receive it, is a substantial right of property—especially, where the services are rendered for compensation. But even if such right be not strictly a property right, it is, beyond question, part of one's liberty as guaranteed against hostile State action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways.' Allgeyer *v.* Louisiana, 165 U. S., 578; 41 L. Ed., 832; 17 Sup. Ct. Rep., 427; Adair *v.* United States, 208 U. S., 161, 173; 52 L. Ed., 436, 442; 28 Sup. Ct. Rep., 277. If pupils, of whatever race—certainly, if they be citizens—choose, with the consent of their parents, or voluntarily, to sit together in a private institution of learning while receiving instruction which is not in its nature harmful or dangerous to the public, no government, whether Federal or State, can legally forbid their coming together, or being together temporarily, for such an innocent purpose. If the Commonwealth of Kentucky can make it a crime to teach white and colored children together at the same time, in a private institution of learning, it is difficult to perceive why it may not forbid the assembling of white and colored children in the same Sabbath school, for the purpose of being instructed in the Word of God, although such teaching may be done under the authority of the church to which the school is attached as well as with the consent of the parents of the children. So, if the State court be right, white and colored children may even be forbidden to sit together in a house of worship or at a communion table in the same Christian church. In the cases supposed there would be the same association of white and colored persons as would

occur when pupils of the two races sit together in a private institution of learning for the purpose of receiving instruction in purely secular matters. Will it be said that the cases supposed and the case herein in hand are different, in that no government, in this country, can lay unholy hands on the religious faith of the people? The answer to this suggestion is that, in the eye of the law, the right to enjoy one's religious belief, unmolested by any human power, is no more sacred nor more fully or distinctly recognized than is the right to impart and receive instruction not harmful to the public. The denial of either right would be an infringement of the liberty inherent in the freedom secured by the fundamental law. Again, if the views of the highest court of Kentucky be sound, that Commonwealth may, without infringing the Constitution of the United States, forbid the association in the same private school of pupils of the Anglo-Saxon and Latin races respectively, or pupils of the Christian and Jewish faiths, respectively. Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes, simply because of their respective races? Further, if the lower court be right, then a State may make it a crime for white and colored persons to frequent the same market places at the same time, or appear in an assemblage of citizens convened to consider questions of public or political nature, in which all citizens, without regard to race, are equally interested. Many other illustrations might be given to show the mischievous, not to say cruel, character of the statute in question, and how inconsistent such legislation is with the great principle of the equality of citizens before the law."

While the foregoing is from a dissenting opinion, as above stated, we believe that the rule of law must be as is stated at the beginning of the quotation.

As there said, it manifestly must be true that the use of one's capacity to impart instruction to others "may not be forbidden or interfered with by government, certainly not, unless such instruction in its nature is harmful to the public morals or imperils the public safety." It likewise must be true that the "right to impart instruction harmless in itself or beneficial to those who receive it, is a substantial right of property * * * but even if such right be not strictly a property right, it is beyond question a part of one's liberty as guaranteed against hostile State action by the Constitution of the United States. * * *"

Manifestly this court cannot approve the finding of the Iowa Legislature that the instruction in the German language given by the plaintiff in error to his pupils was "in its nature harmful to the public morals or imperils the public safety." The right of the plaintiff in error to give such instruction, therefore, was a property right, or if not strictly a property right it is a part of his liberty guaranteed against hostile State action by the Fourteenth Amendment to the Federal Constitution.

The above also bears upon the religious question in event that the court concurs with the minority of the Iowa court. Mr. Justice Harlan certainly treated the Fourteenth Amendment as guaranteeing religious liberty. He said:

> "Will it be said that the cases supposed and the case herein in hand are different in that no government, in this country, can lay unholy hands on the religious faith of the people? The answer to this

> suggestion is that, in the eye of the law, the right to enjoy one's religious belief, unmolested by any human power, is no more sacred or more fully or distinctly recognized than is the right to impart and receive instruction not harmful to the public. The denial of either would be an infringement of the liberty inherent in the freedom secured by the fundamental law."

We do not contend that a State may not prohibit any subject being taught in its public schools. Doubtless it might forbid the teaching of United States history in its public schools. The State's power, however, over private schools is a different matter.

The power which the State may exercise over private schools is well stated in a single paragraph.

24 R. C. L., page 562, section 5, reads:

> "CONTROL OVER PRIVATE SCHOOLS.—While, as already stated, the power of the Legislature over public schools is complete, there is no such power in regard to private schools, nor in fact any power at all in so far as the educational features are concerned. The power of the Legislature to regulate or prohibit private schools is subject to the same limitations as the power to regulate private property rights in general. The Legislature, under the police power, may regulate education in many respects in private schools. But the exercise of such police power must not be arbitrary, and must be limited to the preservation of the public safety, the public health, or the public morals. The Legislature has no power to prohibit or authorize the voters to prohibit the establishment of a private educational institution, unless it be inimical to the public health, public safety or public morals. If the private institution be a cor-

> poration any act attempting to regulate it by amending its charter, where the power of amendment was not reserved, comes squarely under the decision of the Dartmouth College case."

As a part of a compulsory education system the State may prohibit children of compulsory school age from attending schools not offering the compulsory course, but, manifestly, it cannot prohibit the school doing compulsory school work from teaching additional subjects not in any way harmful to the State or the children, and in nowise imperiling the public welfare or public morals.

The Nebraska language act is quite similar to the Iowa act. In Nebraska District E. L. S. *v.* McKelvie, 104 Nebraska, 93; 175 N. W., 531, the Nebraska law was construed so as to permit the teaching of a foreign language as an additional subject where the teaching thereof did not interfere with the instruction in the compulsory branches in English. That court said:

> "Furthermore, there is nothing in the Act to prevent parents, teachers or pastors from conveying religious or moral instruction in the language of the parents, or in any other language, or in teaching any other branch of learning or accomplishment, provided that such instruction is given at such time that it will not interfere with the required studies."

The Nebraska Supreme Court further said:

> "If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would be an invasion of personal liberty,

discriminative and void, there being no reasonable basis of classification, but if such instruction can be given in addition to the regular course, and not so as to interfere with it, then equality and uniformity results, and no one can complain."

The Nebraska court, however, in Meyer v. State, 187 N. W., 100, has modified or overruled the part of the decision quoted above. In the McKelvie case, *supra*, the opinion is by Justice Letton, and in the Meyer case Justice Letton, Chief Justice Morrissey concurring, dissent.

As the dissent is bottomed upon the Federal Constitution and the argument appears to us to be sound, we quote therefrom, as follows:

Justice Letton said:

"The matter is of grave importance, since it involves the question as to the extent that a Legislature may infringe upon the fundamental rights and liberty of a citizen protected by the State and Federal constitutions. I am unable to agree with the doctrine that the Legislature may arbitrarily, through the exercise of the police power, interfere with the fundamental right of every American parent to control, in a degree not harmful to the State, the education of his child, and to teach it, in association with other children, any science or art, or any language which contributes to a larger life, or to a higher and broader culture.

"Educators agree that the period of early childhood is the time that the ability to speak or understand a foreign, or a classic, language is the most easily acquired. Every parent has the fundamental right, after he has complied with all proper requirements by the State as to education, to give his child

such further education in proper subjects as he desires and can afford. As was pointed out in Nebraska District, E. L. S., *v.* McKelvie, *supra,* the legitimate object of the statute has been accomplished when the basic and fundamental education of every child in the State has been acquired in the English language, instead of in the language of a foreign country.

"The State has the right to manage and control in all particulars schools maintained by taxation; to place other schools under State supervision and to require the same general standards; but it has no right to prevent parents from bestowing upon their children a full measure of education in addition to the State required branches. Has it the right to prevent the study of music, of drawing, of handiwork, in classes or private schools, under the guise of police power? If not, it has no power to prevent the study of French, Spanish, Italian, or any other foreign or classic language, unless such study interferes with the education in the language of our country, prescribed by the statute.

"In State *v.* Ferguson, 95 Neb., 63, 73; 144 N. W., 1039, 1043; 50 L. R. A. (N. S.), 266, it is said in the opinion by Judge Fawcett:

" 'The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as 'all in all' and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children.'

We have said that the Legislature cannot, under the guise of police regulation, arbitrarily invade personal rights, and that—

"'The test when such regulations are * * * in question is whether they have some relation to the public health or public welfare, and whether such is, in fact, the end sought to be attained.' Smiley *v.* MacDonald, 42 Neb., 5; 60 N. W., 355, 27 L. R. A., 540; 47 Am. St. Rep., 684; *In re* Anderson, 69 Neb., 686; 96 N. W., 149; 5 Ann. Cas., 421; Union P. R. Co. *v.* State, 88 Neb., 247; 129 N. W., 290; State *v.* Whithnell, 91 Neb., 101; 135 N. W., 376, 40 L. R. A. (N. S.), 898.

Since the restriction cannot be supported on the ground of 'public welfare,' it is now sought to sustain it on the ground of 'public health.' The supposition that this restriction in the statute might have been inserted in the interest of the health of the child is evidently an after-thought. It was not suggested by counsel either in the briefs or at the hearing. It is patent, obvious, and a matter of common knowledge that this restriction was the result of crowd psychology; that it is a product of the passions engendered by the World War, which had not had time to cool. The idea that the Legislature had in mind the protection of the child from overstudy, or lack of recreation, seems far-fetched, when it is realized that outside of city districts only 12 weeks' school attendance in a year is required by the law, and that in city districts the hours of study for young children are carefully limited by the boards of education. The statute was construed and upheld (except as to the restriction now reinstated by the majority opinion) in the opinion in the McKelvie case, written by me. It was there held (with that exception) to be a proper and salutary measure, upon substantially the same grounds as are now suggested in the majority opinion. The doctrine of *stare decisis* should be applied, and the former opinion adhered to."

Thus far no suggestion has been made that the Iowa language statute was passed as a public health measure. The Iowa compulsory school year is 24 weeks. (See Compulsory Education Law, printed near beginning of Points and Authorities.) We believe that the reasoning of Mr. Justice Letton, *supra,* is unanswerable should the defendant in error try to uphold the law as a public-health measure.

The rule when and how the police power may be exercised by the States is well stated in 12 *Corpus Juris,* page 929, section 441, as follows:

> "In order that a statute or ordinance may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense or manifest evil or the preservation of the public health, safety, morals, or general welfare, that there is some clear, real, and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend toward the accomplishment of the object for which the power is exercised."

Authorities sustaining the above rule are overwhelming. Among the many that might be cited, we cite the following:

Lawton *v.* Steele, *supra.*

Buchanan *v.* Warley, 245 U. S., 60, 81; 62 L. Ed., 149, 163.

Lochner *v.* New York, 198 U. S., 45, 56; 49 L. Ed., 937, 941.

Truax *v.* Raich, 239 U. S., 33, 41; 60 L. Ed., 131, 135.

Yee Gee *v.* City, 235 Federal, 757, 763, and 764.

People *v.* Steele, 83 N. E., 236 (Ill.); 14 L. R. A. (N. S.), 361, 365.

People *v.* Weiner, L. R. A., 1916 C, pages 775, 778 (Ill.).

The above authorities were cited in the petition for rehearing and liberal quotations made therefrom, which appear on pages 42-45, inclusive, of the printed transcript of record. It is unnecessary, therefore, to print the quotations here.

Before the constitutionality of a statute can be sustained under the police power the courts must be able to see (1) the evil or mischief to be remedied, which evil or mischief must affect the general welfare, safety, morals, or health of the people, (2) that the provisions of the statute have some clear, real, and substantial connection with the purpose of the enactment, and (3) that the statute in plain and appropriate manner tends toward remedying the evil.

The authorities further hold that where regulation will accomplish the end prohibition may not be resorted to.

For example, the Illinois court in People *v.* Weiner, *supra,* said:

> "It is eminently proper to require that material be free from germs of contagion and infection before being used in mattresses, comforters or quilts, whether the material be second-hand or new; but the possible danger to health or safety does not justify the absolute prohibition of a useful industry or practice where the danger can be dealt with by regulation."

The industry was the manufacture of mattresses, etc., from second-hand material; this the statute attempted to prohibit.

The evil might have been remedied by requiring such material to be properly sterilized.

This court, in Buchanan *v.* Warley, 245 U. S., 60, 81; 62 L. Ed., 149, 163, used this pertinent language:

> "That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control and to which it must give a measure of consideration may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges."

In that case this court pointed out certain regulatory measures that it had upheld, such as separate schools and separate cars for the white and colored races, but when it had before it a statute prohibiting a colored person from moving into a block the majority of the residents of which were white it declared the law void.

That there should be a measure of consideration by State legislatures sufficient to insure that children educated in America shall know English and receive at least an elementary English education, as well as instruction in patriotism, is manifest to all. Proper regulation will secure this without prohibiting children from learning a foreign language in private schools.

As heretofore suggested, we believe that not only are civil rights invaded by the statute, but, under the circumstances shown in this case, the religious liberties of the plaintiff in error, his pupils, and their parents are also infringed.

Religious Phase.

The agreed facts show that German was taught for a religious purpose, and it should be held to be a part of the religious instruction given by the school.

Authorities supporting the contention that religious liberties are involved, are:

Church of the Holy Trinity *v.* United States, 143 U. S., 457; 36 L. Ed., 226.

State *v.* Amana Society, 132 Iowa, 304.

The dissenting opinion in the instant case contains quotations from the authorities above cited, and it is therefore, unnecessary to comment on them.

Classification.

The classification in the Iowa language act raises a further constitutional question. The prohibition is limited to elementary schools. There is no inhibition preventing the rich and the well-to-do from having their children taught a foreign language at home or in classes outside of the school, while the poor man sending his children to this school can not have his children taught a foreign language in the only place which his means will enable him to employ.

There is no distinction as to the subject-matter. It is not the subject-matter, but the language, that falls under the ban of the statute. No distinction is made between good schools and bad schools, or between good teachers and bad teachers. The languages of our associates in the World War are equally condemned with the language of our enemies.

A statute containing such inconsistencies and working such results passes the limit of proper police regulation.

Neb. District E. L. S. *v.* McKelvie, 175 N. W., 530, 535.

Adams *v.* Tanner, 244 U. S., 590, 596; 61 L. Ed., 1336, 1343.

Opinion of the Justice, 34 L. R. A. (N. S.), 604, 607 (Mass.).

In Adams *v.* Tanner, *supra,* this court declared a statute of the State of Washington void for the reason that there was no attempt to discriminate between good employment agencies and bad employment agencies. The statute in that case simply prohibited any agency from charging or receiving any fees from employees for finding them employment.

In the opinion of the justices, *supra,* the proposed statute would have prohibited women under the age of 21 years from entering or being served with food or drink in a hotel or restaurant conducted by Chinese. The court recognized that there might be evils for young women to enter or to be served in certain restaurants or hotels. The holding was that bad restaurants and hotels might be kept by Americans or persons of other nationality as well as by Chinese, and that the classification was arbitrary and unreasonable.

The Massachusetts court quoted from Mr. Justice Brewer as follows:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."
>
> G., C. & S. F. R. Co. *v.* Ellis, 165 U. S., 150, 165.

If the children who were taught German by the plaintiff in error might have been lawfully taught by their parents

or by tutors in the home or in classes outside of school, it would seem that the classification has no proper basis.

Although the holding in the McKelvie case has been overruled by the majority of the Supreme Court of Nebraska, we think that the original decision in the respects under consideration clearly states the rule required by the Federal Constitution as follows:

> "If the law means that parents can teach a foreign language, or private tutors employed by men of means may do so, but that poorer men may not employ teachers to give such instruction in a class or school, it would be an invasion of personal liberty, discriminative and void, there being no reasonable basis of classification."

The Iowa act does just what the above rule condemns.

Conclusion.

The case is an important one. The courts of last resort of Iowa, Nebraska, and Ohio have upheld these statutes. They have not only upheld them, but they have given them a very arbitrary and severe construction. Acts admittedly innocent are held to be criminal, contrary to the rule that innocent acts are not within the spirit of the law although within the letter. Fundamental rights, as well as the liberty and property rights of the plaintiff in error, are involved. The decision by your honors in this case will be one of the precedens defining the boundary between the rights and liberties of the people, on the one hand, and the power of the States on the other. We believe that those rights and lib-

erties have been invaded and that, therefore, the statute should be declared void.

Respectfully submitted,

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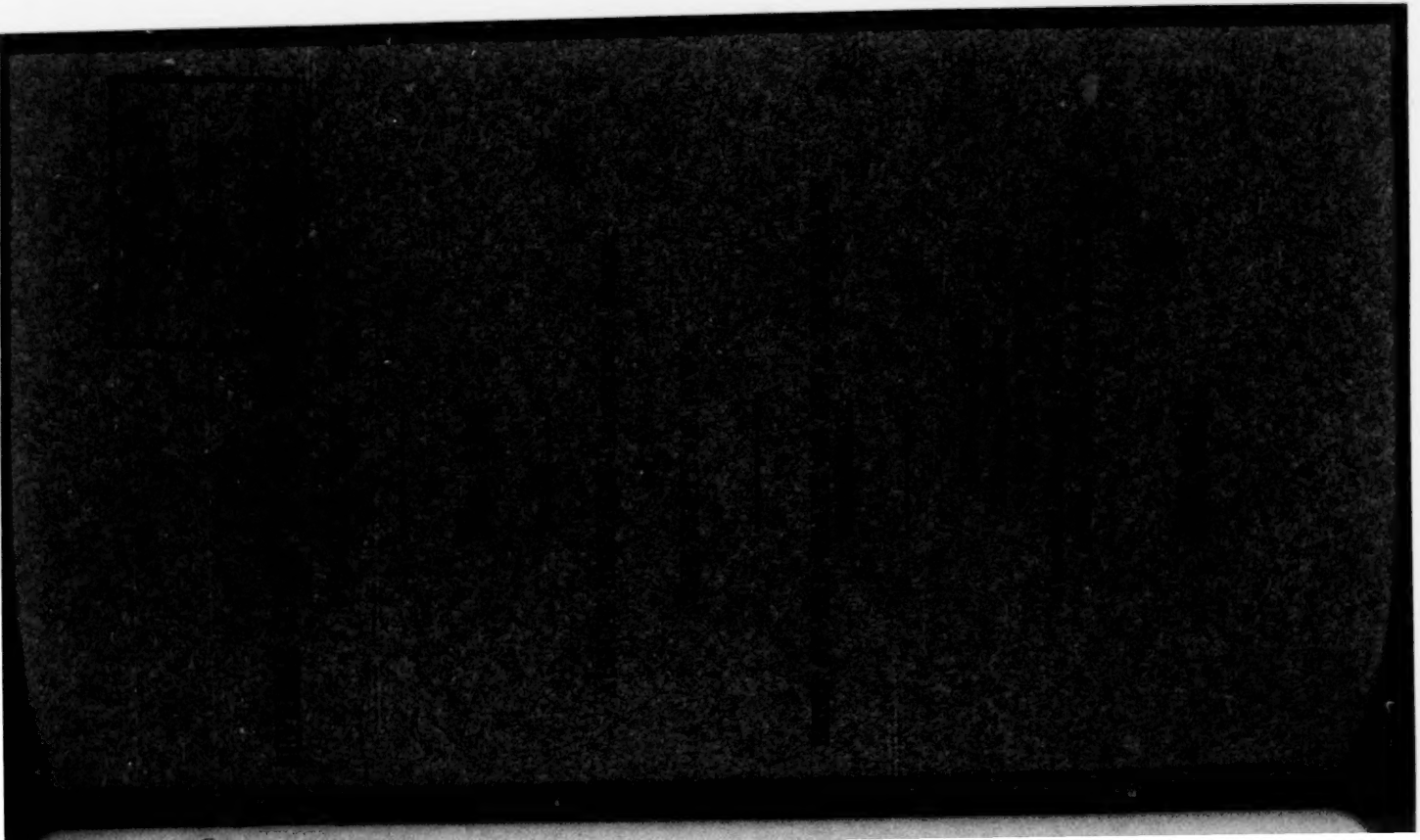

SUBJECT INDEX.

1. Constitutional provisions claimed to be involved:
   Article XIV, Amendments to Constitution of the United States.
   Section 1, Article I, of the Constitution of Iowa.
2. Statute to be construed:
   Iowa Language Act, chapter 198, Acts of the Thirty-eighth General Assembly (Session Laws of Iowa, 1919).

TABLE OF CASES.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 134.

AUGUST BARTELS, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

BRIEF AND ARGUMENT OF THE STATE OF IOWA, DEFENDANT IN ERROR.

Statement.

The plaintiff in error was engaged in teaching in a parochial school in Bremer County, Iowa. There were no classes in his school above the eighth grade. The school year of 36 weeks was longer than the public school year required by statute, but it was not longer than is usually required by the boards of directors under authority given them by statute to prescribe for the school year. This school purported to take the place of a public school. As a regular

part of the school work reading was taught in the German language in the ordinary way, using the ordinary secular text-books, which correspond to the books that are usually used in teaching English reading in the public schools.

Chapter 198 of the Acts of the Thirty-eighth General Assembly of Iowa prohibits instruction in the secular subjects in all of the schools, public or private, within the State of Iowa in any language other than English. Plaintiff in error was arrested for violation of this law; was convicted in the Justice Court of Bremer County, which conviction was affirmed by the District Court of that county and by the Supreme Court of the State of Iowa.

Propositions and Points.

I.

Constitutional Question.

Plaintiff in error cannot insist that the statute is unconstitutional because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether in the case he presents the effect of applying the statute is to deprive him of his property without due process of law.

Davidson *v.* New Orleans, 96 U. S., 97, 104.
New York and North Eastern R. Co. *v.* Town of Bristol, 151 U. S., 566, 570.

The constitutionality of the statute cannot be assailed without showing that the party questioning it has been de-

prived of property or liberty in some arbitrary way; because some other person might be thus affected, he is not authorized to ask the court to invalidate a law on questions of constitutionality which do not directly affect him.

The constitutionality of acts like the one in question has been upheld in the following cases:

Nebraska District E. L. S. *v.* McKelvey, 104 Nebr., 93; 175 N. W., 531.

Pohl *v.* State (Ohio), 132 N. E., 20.

State of Iowa *v.* August Bartels, 191 Ia., 1074.

Castello *v.* McConnico, 168 U. S., 680.

Tyler *v.* Judges, 179 U. S., 410.

Strouse *v.* Foxworth, 231 U. S., 162.

II.

Religious Freedom.

The language of the statute does not violate article I, section 3, of the State Constitution prohibiting the free exercise of religion. The defendant is not being prosecuted for giving religious instruction in a foreign language.

Commonwealth *v.* Herr, 229 Pa. St., 132.

III.

Classification.

When the law operates equally upon all, when the rule of conduct is uniform throughout the State, affecting alike the legislator, his family, his neighbors and friends, the

presumption lying at the foundation of representative government is that the legislator will act wisely and in the interest of all of the people. Such legislation is not open to the objection that it is class legislation.

Viermaster *v.* White, 179 N. Y., 235; 70 L. R. A., 796.

Patsone *v.* Penn, 232 U. S., 138.

Northwestern Laundry *v.* City of Des Moines, 239 U. S., 486.

Lindsley *v.* Natural Carbonic Gas Co., 220 U. S., 61.

Booth *v.* Illinois, 184 U. S., 425, 431.

Adams *v.* Milwaukee, 228 U. S., 572.

State *v.* Fairmont Creamery Co., 153 Iowa, 702.

Bopp *v.* Clark, 165 Iowa, 697.

Hunter *v.* Coal Co., 175 Iowa, 245.

IV.

Police Power.

In determining the reasonableness of a police regulation the Legislature is at liberty to act with reference to established usages, customs, and conditions of the people and with a view to the promotion of their comfort and the preservation of the public peace and good order.

Plessy *v.* Ferguson, 163 U. S., 550.

Atlantic Coast Line R. Co. *v.* Goldsboro, 232 U. S., 556, 559.

It will be presumed that the Legislature in passing this statute was familiar with existing conditions, and that no

general laws are ever passed either through want of information on the part of the Legislature or because it was misled by false representations of innocent parties.

12 C. J., 799.

Laurel Hill Cemetery Asso. *v.* San Francisco, 216 U. S., 358, 363.

Courts do not sit in judgment upon the wisdom of legislative enactments.

Louisville, etc., R. Co. *v.* Kentucky, 183 U. S., 512.

Lottery Cases, 188 U. S., 363.

McCrary *v.* U. S., 195 U. S., 53.

Ex parte Bryce (Nev.), 75 Pac., 1.

ARGUMENT.

I.

The language act providing that the medium of instruction in all secular subjects taught in all of the schools, public and private, within the State of Iowa shall be the English language, prohibiting the use of any other language than English in secular subjects in said schools below the eighth grade, will be found copied at length on pages 11 and 12 of the brief of the plaintiff in error in this cause.

The plaintiff in error, having been convicted of a violation of the terms of section I of said act, insists that he is being deprived of liberty or property, and that certain guaranteed rights are being denied him. That defendant has been deprived of any rights guaranteed him by the Constitution does not appear at any place in the record. It does not appear that the defendant has lost his position or

is prevented from pursuing his calling as a teacher by the operation of this statute. He is prevented from teaching German below the eighth grade, and a fine has been imposed upon him for a violation of this provision of the statute. He cannot raise questions here that pertain only to the liberties of the pupils or of their parents. Whether these pupils are denied arbitrarily certain rights, if such is the case, is not before the court at this time. They and not the teacher are supposed to be the recipients of the benefits of receiving instruction in German.

Conceivably a case might be brought which would fairly present the question whether the rights and liberties of these children are abridged by this statute in an arbitrary way. Much of counsel's argument is devoted to this question; thus it is claimed that the teaching of German in this school is justified because it is to be used for the purpose of enabling the children to read the Bible and receive religious instruction in the German language; but if that is true it is the children who are deprived of privileges they have heretofore enjoyed and not the teacher. The following language found in the case of Davidson *v.* New Orleans, 96 United States, 97, 104, is, we believe, an answer to the argument of plaintiff in error on this proposition:

> "The Fourteenth Amendment cannot be availed of as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in the State court of the justice of the decision against him and of the merits of the legislation on which such a decision may be founded."

We believe that a further discussion of this point would be burdensome.

In deciding whether defendant is being arbitrarily deprived of his rights it is immaterial what was the purpose of the instruction. If the intention had been to have the children learn German, so that they might be better fitted for commercial pursuits, the question in this case would be the same. We think the statute is constitutional and that it could not be successfully attacked by any interested person. Following the lead of defendant, we shall discuss it generally.

II.

Religious Phase.

Plaintiff in error was engaged in teaching German in his school as a secular subject, and while that subject was reading, yet every one who has had a course in German reading knows that in order to read one must have instruction in German grammar. There is nothing about the teaching of the language that remotely suggests religion. It is purely a secular subject, and secular, as used in the law, has its ordinary meaning, to wit, that which is not religious. The readers used in the class-room are admitted to be similar to the readers used in teaching English in our public schools. It is not pretended that the great Bible truths are dealt with, or that things religious are referred to in the readers themselves, except perhaps incidentally as a part of historical and literary events. The pupils of the plaintiff in error may never receive religious instruction in German or any other language so far as his school is concerned. He does not contend that the subject, for the teaching of which he was arrested, is religious in character, but rather that it was in-

tended to equip the pupils for religious worship outside of his school. The statute under consideration does not in any way strike at the exercise of religious freedom or pretend to prevent religious worship. There is nothing in the law preventing the plaintiff in error from giving his pupils religious instruction in English or in German provided they get their knowledge of that language in some other way than in his school. We are not concerned in this action in trying to determine in what way they might acquire the use of German, but undoubtedly their parents could teach it to them. The test of this statute is not being made from the standpoint of the children or of their parents; they are not represented, and much of the able argument of plaintiff in error is wide of the mark, because it is assumed that he may raise all of the questions that might be raised by the parents or pupils.

It is not asserted that plaintiff in error is being deprived of his right to worship according to the dictates of his own conscience, or that his freedom of worship is being interfered with in any way. He does assert that he believes that his religious liberties are infringed by the legislation in question and refers to the dissenting opinion written by Mr. Chief Justice Evans, of the Iowa Supreme Court, in this case. He has so little confidence in this assertion, however, that he does not argue the point at length, and we will therefore refrain from further comment thereon.

III.

Classification.

We may as well eliminate the claim that the language act denied the plaintiff in error the equal protection of the law.

There is no question of permitting some and denying others the right to teach a foreign language. It applies to all schools, public, private, and parochial, and consequently to all teachers that may be employed in those schools. Compliance with the law requiring certain subjects to be taught is all that can be demanded of the parochial school. It is not contended but that, as applied to the public school, the act means exactly what it says, viz., "that all instruction below the eighth grade in secular subjects shall be in English." Suppose the public school that operates in the district where this action arose had done the very thing that the defendant admits he was doing. Plaintiff in error admits that with reference to such school the legislation in question is constitutional. Is there any reason advanced by counsel, or that could be advanced by any one, for holding that one interpretation is permissible where the instruction is in a private or parochial school and a different interpretation where the same instruction is given in a public school. The words "public, private, and parochial" are used in the act in the same phrase and all modify the word "schools." If private and parochial schools are permitted to give instruction in a foreign language, so that the children of foreign parentage may be given religious instruction in the language of their elders, then we must accord the same privilege to the public school.

It seems to us that the argument of plaintiff in error on this point turns against him when analyzed, and that if an interpretation were placed upon the act in question permitting the teaching of German by plaintiff in error in his school and denying that right in other schools the legislation might be subject to the criticism which plaintiff in error attempts to make under this assignment in his brief.

IV.

Police Power.

The law has a very tender regard for the rights of childre and recognizes their helplessness, and under the police powe many statutes have been enacted for their protection. Whil these statutes are ordinarily prompted by a consideration o the morals or the health of the child, yet many of them hav to do solely with the education and proper rearing of th child. All of these statutes infringe somewhat upon th rights of parents, and they have been often attacked as in fringing upon the rights of the children themselves. Unde our form of government the very safety of the State depend upon the proper education of its citizens, so that the publi interest and welfare and even the sovereignty of the Stat is directly affected by this sort of legislation. The statut under consideration can be defended upon the latter ground The presumption is that the Legislature in enacting thi statute was familiar with existing conditions. As such con ditions warranted the conclusion that children were bein educated away from the path of loyalty, then it was th undoubted right of the Legislature to prohibit the teachin of those things which tended to alienate the affections of th children and fix them upon some foreign power or upon in stitutions which have no place in a democracy.

At the time of the enactment of this legislation our whol country was discovered to be infested with German spies; people of German birth, whether citizens of this country o not, were openly sympathetic with the nation that violated its treaties with friendly powers and that was engaged in

ruthless warfare against unoffending people. Our own flag was insulted, our people murdered, and our protests scorned. There were large numbers of people in almost every community who opposed our entry into the war, belittled our efforts to prepare, opposed the draft, resisted the great drives for funds to prosecute the war, rejoiced at our failures and the failures of our allies, all the while circulating a propaganda that was more deadly than German bullets. It is true that in Iowa the situation was less acute than in many other places, because our German and Austrian population was more scattered, but there were anxious times in nearly every county of the State. In spite of the fact that there was an overwhelming sentiment in favor of our entry into the war and of its vigorous prosecution after we had entered the great struggle, these people, many of whom had renounced their allegiance to the fatherland and sworn to support the Government of the United States, were disloyal openly where they dared take such a course and secretly where they did not.

Because these people retained the language of their birthplace this disloyalty was difficult to detect. There was a patriotic demand that English be used on all occasions, and then it was that the disloyal threw out the smoked screen of religion. Religious freedom is one of the corner-stones of constitutional structure, but it ought not to be tolerated as a subterfuge to encourage the building of social centers all over the country which are unAmerican and which tend to perpetuate manners, customs, and modes of thought that are not in harmony with our political institutions.

As asserted by plaintiff in error in his argument, the most impressible age of a child is when he is in attendance upon

the lower grades in school. It is then that under the gu
of preparing him for the study of the Bible and religio
worship with his parents his instructors can deeply impr
upon his mind and heart the greatness of the fatherland a
the divine right of Kaisers. Every one familiar with t
subject knows the character of stories that are prepared
the translation of the student of the German language.
has been said, they have little or nothing to do with t
Bible and are far from religious in character. If a stude
can read and understand the German Bible, surely he c
read and understand secular subjects in that language.
he can converse about religious matters, he can conve
about secular matters in the same language; if he can wr
all religious subjects in the German script, he can use it
fermenting distrust of American institutions and polici
These things have been done and are being done today a
they will continue to be done. If we are powerless to p
tect the sovereignty of the State and of the Nation agai
foreign propaganda spread about under our very noses in
language we do not understand, then it is high time we w
finding it out.

We say to vendors of food, you must not mix poison wi
your wares. We protect the bodies of our people in this w
Are we powerless to protect them against mental poison
May we not by appropriate legislation strike at the very r
of the evil? Can we say to the foreigner or to those
foreign extraction, you may use your language for religio
purposes, but for no other? Could the Legislature ha
passed a statute permitting the learning of a foreign la
guage to be used solely for religious purposes? We presu
so, but it would have been impossible to enforce it. T

only sort of law that could be effective is some such law as was adopted.

The only way in which the child may attain and retain proficiency in the use of a foreign language is to use it regularly. Such use if confined to purely religious subjects would be impractical, and plaintiff in error does not contend otherwise; on the contrary, he speaks of the cultural effect of learning the additional language and of the readiness with which children may learn to use two or more languages, showing that he knows that such languages are to be the medium of expression in all subjects. He assumes that the child will acquire a thorough knowledge of English if the compulsory branches are taught in English, but it would be easy to evade this requirement and place the chief emphasis on the learning of a foreign tongue. In other words, if a community wants to evade the law it would be impossible to prevent them from so doing if we permit the use of a foreign language in teaching secular branches.

The Legislature of Iowa knew the facts as they existed in this State at the time of the passage of the foreign-language act. The act was designed in the interest of the safety and welfare of the community. The Supreme Court of Nebraska had already upheld the constitutionality of a similar act passed by the Legislature of that State.

Nebraska District E. L. S. *v.* McKelvey, 104 Nebr., 93; 175 N. W., 531.

Since the decision of this case in the Supreme Court of Iowa the Supreme Court of Ohio has upheld similar legislation in that State.

Pohl *v.* State (Ohio), 132 N. E., 20.

In this connection the language of this court, speaking through Mr. Justice Holmes in the case of Laurel Hill Cemetery Association *v.* San Francisco, 216 U. S., 358, 363, is pertinent:

> "If every member of this bench clearly agreed that burying grounds were centers of safety and thought the board of supervisors and the Supreme Court of California wholly wrong, it would not dispose of the case. There are other things to be considered. Opinions still may be divided, and if on the hypothesis that the danger is real the ordinance would be valid, we should not overthrow it because of our adherence to the other belief * * *. The plaintiff must wait until there is a change of practice, or at least an established consensus of opinion, before it can expect this court to overthrow the rules that law-makers and the court of its own State upheld."

Conclusion.

This case is of considerable importance. In the judgment of the Legislature of the State of Iowa conditions existed which not only warranted but demanded the legislation in question, and recent history has demonstrated that their judgment has support in fact. Opinions may differ as to the wisdom of the Legislature, but, as was said by this court in the case of Louisville and Nashville Railroad Company *v.* Kentucky, 183 U. S., 503, 512, speaking through Mr. Justice Shiras:

> "It is scarcely necessary to say that courts do not sit in judgment on the wisdom of legislative or constitutional enactments. This is a general principle; but it is especially true of Federal courts when they are asked to interpose in a controversy between a State and its citizens."

None of the fundamental rights guaranteed to plaintiff in error by the Constitution have been violated. He has been deprived of neither liberty nor property. His religious freedom has not been denied, and he may still worship God according to the dictates of his own conscience. If, as his argument would indicate, he seeks in this cause the protection of the rights of others, may we answer him in the language of this court, speaking through Mr. Justice White:

> "The plaintiff in error has no interest to assert that the statute is unconstitutional because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether in the case he presents the effect of applying the statute is to deprive him of his property without due process of law."

We submit that there is no constitutional question presented demanding the attention of this court, and that this case should be dismissed or the decision of the Supreme Court of Iowa affirmed.

Respectfully submitted,

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I hereby certify that the cost of printing the foregoing brief and argument is $—.

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